

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA**

**ZURICH AMERICAN INSURANCE  
COMPANY, a corporation,**

**Plaintiff,**

**v.**

**JUNIORETTE GRIFFIN SMITH, as  
administratrix of the estate of ROGER  
DALE SMITH, DECEASED,**

**Defendant.**

**CASE NO.: 2:07-cv-216-MEF**

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF PLAINTIFF ZURICH  
AMERICAN INSURANCE COMPANY**

COMES NOW the plaintiff, Zurich American Insurance Company (“Zurich”), and, pursuant to Federal Rule of Civil Procedure 56, hereby moves the Court to enter summary judgment in favor of Zurich and against the Defendant as to all claims and counterclaims in the above-captioned action on the grounds that there is no dispute as to any material fact and Zurich is entitled to judgment as a matter of law. This Motion is based upon the pleadings, the parties’ Joint Stipulation of Facts previously filed with the Court (attached hereto as Exhibit 1), the depositions of the Defendant (transcript attached hereto as Exhibit 2), Doug Boutwell (transcript attached hereto as Exhibit 3), and David Scott (transcript attached hereto as Exhibit 4), and the brief submitted contemporaneously herewith. In further support of its Motion, Zurich says as follows:

1. This declaratory judgment action arises out of the claim made by the Defendant on behalf of the estate of Roger Dale Smith (“Smith”) for uninsured/underinsured

motorist (“UM”) benefits under a policy of business automobile insurance (the “Zurich policy”) issued by Zurich to Boan Contracting Company, Inc. (“Boan”).

2. Smith died as the result of a traffic accident on September 8, 2005. At the time of his fatal accident, Smith was operating his own privately owned vehicle. As such, he was not an “insured” under the Liability Coverage section of the auto policy at issue, because he was neither a named insured nor did he fall within the definition of an insured for purposes of the Liability Coverage section.

3. Moreover, at the time of his accident, Smith was not an insured under the Alabama Uninsured Motorist Coverage Endorsement of the Zurich policy because he was not occupying a “covered ‘auto’” or “a temporary substitute for a covered ‘auto’” as defined by that endorsement. “Covered auto” for purposes of the UM coverage provided by the Zurich policy included only automobiles owned by Boan or another named insured. Smith owned the car in question and was not a named insured, so the policy did not provide the UM coverage claimed by the Defendant.

4. As a matter of law, therefore, Zurich is entitled to a declaration that the policy in question did not cover Smith with respect to his September 8, 2005, accident, and the Defendant’s breach of contract claim is due to be dismissed.

5. Zurich has not acted in bad faith, and the Defendant’s counterclaim for bad faith failure to pay her claim under the policy is due to be dismissed. Zurich properly denied Defendant’s claim on the grounds that Smith was not an insured under the Zurich policy. Zurich did not breach its contract with Boan, and Defendant’s bad faith claim consequently fails as a matter of law.

WHEREFORE, premises considered, Zurich requests the Court to enter an Order granting summary judgment in favor of Zurich, and against the Defendant, as to all claims asserted by Zurich and all counterclaims asserted by the Defendant in this action.

/s/ Vernon L. Wells, II  
Vernon L. Wells, II (asb-2950-135v)

/s/ J. David Moore  
J. David Moore (asb-8552-r70j)

Attorneys for Plaintiff  
Zurich American Insurance Company

OF COUNSEL:

Walston, Wells & Birchall, LLP  
1819 5<sup>th</sup> Avenue North, Suite 1100  
Birmingham, Alabama 35203  
Telephone: (205) 244-5200  
Telecopier: (205) 244-5400  
.

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

**Christopher M. Sledge  
Woodard, Patel & Sledge  
1213 East Three Notch Street  
Andalusia, Alabama 36420**

This the 10<sup>th</sup> day of March, 2008.

/s/ J. David Moore  
OF COUNSEL

# **EXHIBIT 1**



Policy”). A true and correct copy of this policy is attached hereto as Exhibit A and is incorporated by reference herein.

7. The Boan Policy was effective from June 1, 2005, until June 1, 2006.

8. On September 8, 2005, on Alabama Highway 87, near its intersection with Geneva County Road 16, south of Sampson, Alabama, a vehicle owned and operated by Roger Smith collided with a vehicle operated by Sylvia Hornsby Carter of Sampson, Alabama, and owned by Derrick Carter of Sampson, Alabama.

9. Smith died of injuries sustained in this automobile accident.

10. At the time of the collision described above, Smith was an employee of Boan Contracting Company, Inc.

11. Smith was operating the automobile in which he was injured in the collision described above.

12. Smith was the owner of the automobile in which he was injured in the collision described above.

13. On May 3, 2006, Zurich was notified by letter from Defendant’s attorney that Defendant, as administratrix of the estate of Roger Smith, intended to make a claim for underinsured and/or uninsured motorist coverage benefits under any and all fleet policies issued by Zurich to Boan Contracting Company, Inc.

14. On June 14, 2006, Defendant’s attorney, by letter on behalf of Defendant, as administratrix of the estate of Roger Smith, made a demand on Zurich to settle the claim of the estate of Roger Smith under the Boan Policy for “policy limits in the amount of \$1,000,000.00.”

15. On July 10, 2006, Zurich, through its attorney, denied Defendant's claim of uninsured motorist benefits under the Boan Policy.

16. On November 21, 2006, Defendant, by a letter from her attorney, demanded from Zurich \$3,000,000.00 in settlement of her claim under the uninsured motorist provisions of the Boan Policy.

/s/ Vernon L. Wells, II

Vernon L. Wells, II  
J. David Moore

Attorneys for Plaintiff Zurich American  
Insurance Company

OF COUNSEL

Walston, Wells & Birchall, LLP  
1819 5<sup>th</sup> Avenue North, Suite 1100  
Birmingham, Alabama 35203  
Telephone: (205) 244-5200  
Telecopier: (205) 244-5400

/s/ Christopher M. Sledge

Christopher M. Sledge

Attorney for Defendant Juniorette Griffin  
Smith, as Administratrix of the Estate of  
Roger Dale Smith, deceased

OF COUNSEL

Woodard, Patel & Sledge  
1213 East Three Notch Street  
Andalusia, Alabama 36420

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing JOINT STIPULATION OF FACTS has been electronically filed with the Clerk of Court using the ECF system which will send notification of such filing to the following:

Christopher M. Sledge  
WOODARD, PATEL & SLEDGE  
1213 East Three Notch Street  
Andalusia, Alabama 36420

This the 20th day of July, 2007.

/s/ Vernon L. Wells, II  
Of Counsel



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**COMMERCIAL INSURANCE****COMMON POLICY DECLARATIONS**

Policy Number BAP 4896511-02

Renewal of Number BAP 4896511-01

Named Insured and Mailing Address

Producer and Mailing Address

BOAN CONTRACTING CO., INC.  
 (SEE ENDORSEMENT U-GU-621-ACW)  
 P.O. BOX 778  
 GREENVILLE AL 36037

TURNER INSURANCE & BONDING COM  
 PO BOX 230789  
 MONTGOMERY AL 361230789

Producer Code 09798-000

Policy Period: Coverage begins 06-01-05 at 12:01 A.M.; Coverage ends 06-01-06 at 12:01 A.M.

The named insured is ☐ Individual ☐ Partnership ☒ Corporation  
☐ Other:

This insurance is provided by one or more of the stock insurance companies which are members of the Zurich-American Insurance Group. The company that provides coverage is designated on each Coverage Part Common Declarations. The company or companies providing this insurance may be referred to in this policy as "The Company", we, us, or our. The address of the companies of the Zurich-American Insurance Group are provided on the next page.

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE(S):**

BUSINESS AUTOMOBILE PREMIUM \$ 88,695.00  
 issued by ZURICH AMERICAN INSURANCE COMPANY

**THIS PREMIUM MAY BE SUBJECT TO AUDIT.**

This premium does not include Taxes and Surcharges.

**TOTAL \$ 88,695.00**  
**SEE INSTALLMENT SCHEDULE**

**Taxes and Surcharges****TOTAL \$**

The Form(s) and Endorsement(s) made a part of this policy at the time of issue are listed on the **SCHEDULE of FORMS and ENDORSEMENTS.**

Countersigned this day of

Authorized Representative

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART FORM(S), FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

EXHIBIT A

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY.  
THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE  
TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

## **DISCLOSURE OF PREMIUM (RELATING TO DISPOSITION OF TRIA)**

### **SCHEDULE\***

**(1) Premium attributable to risk of loss from certified acts of terrorism through the end of the policy period based on the extension of the Terrorism Risk Insurance Act of 2002 ("TRIA"):**

**1% OF YOUR AUTO PREMIUM**

**If TRIA terminates, the portion of this premium attributable to the remaining part of the policy period, as modified by any change shown in (2) of this Schedule, applies to the risk of loss from terrorism after the termination of TRIA.**

**(2) Premium change upon termination of TRIA or upon applicability of a Conditional Endorsement:**

No change unless one of the following is completed -

Return Premium:

Additional Premium:

**If we notify you of an additional premium charge, the additional premium will be due as specified in such notice.**

**\*Information required to complete this Schedule, if not shown above, will be shown in the Declarations.**

#### **A. Disclosure of Premium**

In accordance with the federal Terrorism Risk Insurance Act of 2002 ("TRIA"), we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the risk of loss from terrorist acts certified under that Act. That portion of your premium attributable is shown in the Schedule of this endorsement or in the Declarations.

#### **B. Disclosure of Federal Participation in Payment of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 90% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. The Act currently provides for no insurance industry or United States government participation in terrorism losses that exceed \$100 billion in any one calendar year. The federal program established by the Act is scheduled to

terminate at the end of 12/31/05 unless extended by the federal government.

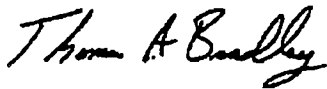
#### **C. Possibility of Additional or Return Premium**

The premium attributable to the risk of loss from certified acts of terrorism coverage is calculated based on the coverage (if any) in effect at the beginning of your policy for certified acts of terrorism. If your policy contains a Conditional Endorsement, the termination of TRIA or extension of the federal program with certain modifications (as explained in that endorsement) may modify the extent of coverage (if any) your policy provides for terrorism. If TRIA terminates or the Conditional Endorsement becomes applicable to your policy, the return premium (if any) or additional premium (if any) shown in (2) of the Schedule will apply. If the level or terms of federal participation change, the premium shown in (1) of the Schedule attributable to that part of the policy period extending beyond such a change may not be appropriate and we will notify you of any changes in your premium.

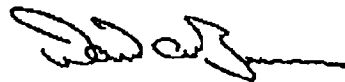
## Important Notice - In Witness Clause

In return for the payment of premium and subject to all the terms of the policy, we agree with you to provide insurance as stated in this policy. This policy shall not be valid unless countersigned by the duly authorized Representative of the Company.

In Witness Whereof, this Company has executed and attested these presents and, where required by law, has caused this policy to be countersigned by its duly authorized Representative.



President



Corporate Secretary

Zurich American Insurance Company  
American Guarantee and Liability Insurance Company  
American Zurich Insurance Company  
Zurich American Insurance Company of Illinois  
Administrative Offices  
Zurich Towers  
1400 American Lane  
Schaumburg, Illinois 60196-1056

**QUESTIONS ABOUT YOUR INSURANCE?** Your agent or broker is best equipped to provide information about your insurance. Should you require additional information or assistance in resolving a complaint, call or write to the following (please have your policy or claim number ready):

Zurich North America  
Customer Inquiry Center  
1400 American Lane  
Schaumburg, Illinois 60196-1056  
1-800-382-2150 (Business Hours: 8 a.m. - 4 p.m. [CT])

The total premium shown in the Declarations of this policy is made payable in installments, on the dates and in the amounts shown below.

| Premium     | Service Charge | Total Due   | Date Due |
|-------------|----------------|-------------|----------|
| \$22,176.00 |                | \$22,176.00 | 06/01/05 |
| \$7,391.00  |                | \$7,391.00  | 07/01/05 |
| \$7,391.00  |                | \$7,391.00  | 08/01/05 |
| \$7,391.00  |                | \$7,391.00  | 09/01/05 |
| \$7,391.00  |                | \$7,391.00  | 10/01/05 |
| \$7,391.00  |                | \$7,391.00  | 11/01/05 |
| \$7,391.00  |                | \$7,391.00  | 12/01/05 |
| \$7,391.00  |                | \$7,391.00  | 01/01/06 |
| \$7,391.00  |                | \$7,391.00  | 02/01/06 |
| \$7,391.00  |                | \$7,391.00  | 03/01/06 |

Failure to pay the Installment Premium by the Date Due shown shall constitute non-payment of premium for which we may cancel this policy.

U-GU-315-A (01/93)

**Policy Number**  
**BAP 4896511-02**

**SCHEDULE OF FORMS AND ENDORSEMENTS**

**ZURICH AMERICAN INSURANCE COMPANY**

**Named Insured** BOAN CONTRACTING CO., INC.

**Effective Date:** 06-01-05  
 12:01 A.M., Standard Time

**Agent Name** TURNER INSURANCE & BONDING COM

**Agent No.** 09798-000

**COMMON POLICY FORMS AND ENDORSEMENTS**

|               |       |  |
|---------------|-------|--|
| U-GU-692-A CW | 08-04 | DISCLOSURE OF PREMIUM (RELATING TO TRIA) |
| U-GU-D-310-A  | 01-93 | COMMON POLICY DECLARATIONS               |
| U-GU-319-E    | 05-96 | IN WITNESS CLAUSE                        |
| U-GU-315-A    | 01-93 | SCHEDULE OF INSTALLMENTS                 |
| U-GU-619-A CW | 10-02 | SCHEDULE OF FORMS AND ENDORSEMENTS       |
| UGU621ACW     | 10-02 | SCHEDULE OF NAMED INSURED(S)             |
| IL 00 17      | 11-98 | COMMON POLICY CONDITIONS                 |
| IL 00 21      | 07-02 | NUCLEAR ENERGY LIABILITY EXCLUSION ENDT  |
| IL 00 03      | 07-02 | CALCULATION OF PREMIUM                   |
| U-GU-596-ACW  | 05-02 | EARLIER NOTICE OF NON-RENEWAL OR CHANGE  |

**AUTOMOBILE FORMS AND ENDORSEMENTS**

|                |       |   |
|----------------|-------|---|
| CA 99 10       | 09-02 | DRIVE OTHER CAR COV-BROAD COV NAMED IND |
| U-CA-D-370-A   | 10-01 | BUSINESS AUTO COVERAGE FORM DECLARATION |
| U-CA-D-370-1-A | 07-94 | BUSINESS AUTO DECLARATIONS (CONT'D)     |
| U-CA-411-A CW  | 10-96 | PREM & REPORTS AGREEMENT COMP RATED POL |
| CA 00 01       | 10-01 | BUSINESS AUTO COVERAGE FORM             |
| CA 99 03       | 07-97 | AUTO MEDICAL PAYMENTS COVERAGE          |
| CA 03 01       | 12-93 | DEDUCTIBLE LIABILITY COVERAGE           |
| CA 21 59       | 12-02 | ALABAMA UM INSURANCE                    |
| CA 00 38       | 12-02 | WAR EXCLUSION                           |
| CA 20 01       | 10-01 | ADDL INSD-LESSOR                        |
| CA 99 44       | 12-93 | LOSS PAYABLE CLAUSE                     |
| CA 99 54       | 07-97 | COVERED AUTO DESIGNATION SYMBOL         |
| UCA388A-1      | 07-94 | PHYSICAL DAMAGE DEDUCTIBLE ENDORSEMENT  |

**Policy Number**  
**BAP 4896511-02**

**SCHEDULE OF NAMED INSURED(S)**

**ZURICH AMERICAN INSURANCE COMPANY**

**Named Insured** BOAN CONTRACTING CO., INC.

**Effective Date:** 06-01-05  
12:01 A.M., Standard Time

**Agent Name** TURNER INSURANCE & BONDING COM

**Agent No.** 09798-000

**NAMED INSURED**

BOAN CONTRACTING CO., INC.

BOAN ENTERPRISES, INC.

PINE ENERGIES, INC.

LIGHTWAVE TECHNOLOGIES, LLC

CHEVAL HOLDINGS, LLC

BOAN DEVELOPMENT CORPORATION

IL 00 17 11 98

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

- a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

IL 00 21 07 02

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE-TANK POLICY

**1. The insurance does not apply:**

**A. Under any Liability Coverage, to "bodily injury" or "property damage":**

- (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.**

**C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:**

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.



2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

IL 00 03 07 02

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CALCULATION OF PREMIUM**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

**EARLIER NOTICE OF NON-RENEWAL OR CHANGE IN COVERAGE**

| Policy No. | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Producer | Add'l. Prem | Return Prem. |
|------------|-------------------|-------------------|-------------------|----------|-------------|--------------|
|            |                   |                   |                   |          | \$          | \$           |

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
BUSINESS AUTOMOBILE COVERAGE FORM

**SCHEDULE**

| Name | Address | Project Name/Number/Description |
|------|---------|---------------------------------|
|------|---------|---------------------------------|

Number or Day's Notice 60

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

- A. For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of non-renewal, as provided in the Policy Conditions, as amended by an applicable state endorsement, or as provided by an applicable state's change in coverage regulation is increased to the number of days shown in the Schedule above.
- B. We will not provide notice of non-renewal and/or change in coverage to the first Named Insured or any person or organization shown in the Schedule, if:
1. You have purchased insurance elsewhere;
  2. You have obtained replacement coverage or have agreed in writing to obtain replacement coverage;
  3. You have requested or agreed to non-renewal; or,
  4. We, or another company within the same insurance group have offered to issue a renewal.

POLICY NUMBER: BAP 4896511-02

COMMERCIAL AUTO  
CA 99 10 09 02**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****DRIVE OTHER CAR COVERAGE - BROADENED  
COVERAGE FOR NAMED INDIVIDUALS**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
 BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
 GARAGE COVERAGE FORM  
 MOTOR CARRIER COVERAGE FORM  
 TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|                        |  |
|------------------------|--|
| Endorsement Effective: | Countersigned By:<br><br>(Authorized Representative) |
| Named Insured:         |  |

**SCHEDULE**

| Name Of Individual   | Liability    |          | Auto Medical Payments |          |
|----------------------|--------------|----------|-----------------------|----------|
|                      | Limit        | Premium  | Limit                 | Premium  |
| W.E. BOAN            | \$ 1,000,000 | \$ 582   | \$ 5,000              | \$ 26    |
| LAURICE BOAN         | \$ 1,000,000 | INCLUDED |                       | INCLUDED |
| BARRY & AMY BOAN     | \$ 1,000,000 | INCLUDED |                       | INCLUDED |
| ALAN & CHRISTIN BOAN | \$ 1,000,000 | INCLUDED |                       | INCLUDED |
| DEAN BOAN            | \$ 1,000,000 | INCLUDED |                       | INCLUDED |

| Name Of Individual   | Uninsured Motorists |          | Underinsured Motorists |         | Physical Damage |          |
|----------------------|---------------------|----------|------------------------|---------|-----------------|----------|
|                      | Limit               | Premium  | Limit                  | Premium | Comp.           | Coll.    |
| W.E. BOAN            | SEE                 | \$ 77    |                        |         | \$ 115          | \$ 271   |
| LAURICE BOAN         | SCHED               | INCLUDED |                        |         | INCLUDED        | INCLUDED |
| BARRY & AMY BOAN     |                     | INCLUDED |                        |         | INCLUDED        | INCLUDED |
| ALAN & CHRISTIN BOAN |                     | INCLUDED |                        |         | INCLUDED        | INCLUDED |
| DEAN BOAN            |                     | INCLUDED |                        |         | INCLUDED        | INCLUDED |

Note - When uninsured motorists is provided at limits higher than the basic limits required by a financial responsibility law, underinsured motorists is included, unless otherwise noted. If Underinsured Motorists Coverage is provided as a separate coverage, make appropriate entry in the Schedule above.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. This endorsement changes only those coverages where a premium is shown in the Schedule.

**B. Changes In Liability Coverage**

1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by any individual named in the Schedule or by his or her spouse while a resident of the same household except:

a. Any "auto" owned by that individual or by any member of his or her household.

b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

2. The following is added to **Who Is An Insured**:

Any individual named in the Schedule and his or her spouse, while a resident of the same household, are "insureds" while using any covered "auto" described in Paragraph B.1. of this endorsement.

**C. Changes In Auto Medical Payments And Uninsured And Underinsured Motorists Coverages**

The following is added to **Who Is An Insured**:

Any individual named in the Schedule and his or her "family members" are "insured" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

**D. Changes In Physical Damage Coverage**

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in the Schedule or his or her spouse while a resident of the same household except:

1. Any "auto" owned by that individual or by any member of his or her household.

2. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

**E. Additional Definition**

As used in this endorsement:

"Family member" means a person related to the individual named in the Schedule by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

POLICY NUMBER: BAP 4896511-02

COMMERCIAL AUTO  
CA 99 10 09 02**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****DRIVE OTHER CAR COVERAGE - BROADENED  
COVERAGE FOR NAMED INDIVIDUALS**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|                        |  |
|------------------------|--|
| Endorsement Effective: | Countersigned By:<br><br>(Authorized Representative) |
| Named Insured:         |  |

**SCHEDULE**

| Name Of Individual | Liability                    |          | Auto Medical Payments |          |
|--------------------|------------------------------|----------|-----------------------|----------|
|                    | Limit                        | Premium  | Limit                 | Premium  |
| DAVID SCOTT        | \$ 1,000,000<br>\$ 1,000,000 | INCLUDED |                       | INCLUDED |

| Name Of Individual | Uninsured Motorists |          | Underinsured Motorists |         | Physical Damage |          |
|--------------------|---------------------|----------|------------------------|---------|-----------------|----------|
|                    | Limit               | Premium  | Limit                  | Premium | Comp.           | Coll.    |
| DAVID SCOTT        | SEE SCHED           | INCLUDED |                        |         | INCLUDED        | INCLUDED |

Note - When uninsured motorists is provided at limits higher than the basic limits required by a financial responsibility law, underinsured motorists is included, unless otherwise noted. If Underinsured Motorists Coverage is provided as a separate coverage, make appropriate entry in the Schedule above.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**A.** This endorsement changes only those coverages where a premium is shown in the Schedule.

**B. Changes In Liability Coverage**

1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by any individual named in the Schedule or by his or her spouse while a resident of the same household except:

a. Any "auto" owned by that individual or by any member of his or her household.

b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

2. The following is added to **Who Is An Insured**:

Any individual named in the Schedule and his or her spouse, while a resident of the same household, are "insureds" while using any covered "auto" described in Paragraph B.1. of this endorsement.

**C. Changes In Auto Medical Payments And Uninsured And Underinsured Motorists Coverages**

The following is added to **Who Is An Insured**:

Any individual named in the Schedule and his or her "family members" are "insured" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

**D. Changes In Physical Damage Coverage**

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in the Schedule or his or her spouse while a resident of the same household except:

1. Any "auto" owned by that individual or by any member of his or her household.

2. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

**E. Additional Definition**

As used in this endorsement:

"Family member" means a person related to the individual named in the Schedule by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

**COMMERCIAL  
AUTO INSURANCE****BUSINESS AUTO COVERAGE PART DECLARATIONS**Insurance for this coverage part provided by:  
**ZURICH AMERICAN INSURANCE COMPANY**Policy Number BAP 4896511-02  
Renewal of Number BAP 4896511-01

| <b>ITEM ONE</b>   |  |  |   |              |
|---|--|--|---|--------------|
| Named Insured and Mailing Address   |  | Producer and Mailing Address   |   |              |
| <b>SEE COMMON POLICY DECLARATIONS</b>   |  |  |   |              |
| Policy Period: From 06-01-05 to 06-01-06 at 12:01 A.M. Standard Time at your mailing address shown above.   |  |  |   |              |
| IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.   |  |  |   |              |
| <b>ITEM TWO - SCHEDULE OF COVERAGES AND COVERED AUTOS</b>   |  |  |   |              |
| This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos." "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTOS Section of the Business Auto Coverage Form next to the name of the coverage. |  |  |   |              |
| COVERAGES   | COVERED AUTOS<br>(Entry of one or more of the symbols from the COVERED AUTOS Section of the Business Auto Coverage Form shows which autos are covered autos) | LIMIT<br>THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS                     | PREMIUM   |              |
| LIABILITY   | 1  | \$ 1,000,000   | \$ 72,010.00  |              |
| PERSONAL INJURY (P.I.P.) ††   |  | SEPARATELY STATED IN EACH P.I.P. END. MINUS Deductible                         | \$  |              |
| ADDED P.I.P.<br>(or equivalent added No-fault cov.)   |  | SEPARATELY STATED IN EACH ADDED P.I.P. ENDORSEMENT                             | \$  |              |
| PROPERTY PROTECTION INS<br>(P.P.I.) (Michigan only)   |  | SEPARATELY STATED IN THE P.P.I. ENDORSEMENT MINUS Deductible FOR EACH ACCIDENT | \$  |              |
| AUTO MEDICAL PAYMENTS   | 7  | \$ 5,000   | \$ INCL   |              |
| UNINSURED MOTORISTS (UM)  | 2  | \$ 1,000,000   | \$ INCL   |              |
| UNDERINSURED MOTORISTS<br>(when not included in UM Cov.)  | 2  | \$ 1,000,000   | \$ INCL   |              |
| P<br>H<br>D<br>Y<br>A<br>S<br>M<br>I<br>A<br>C<br>G<br>A<br>E<br>L  | COMPREHENSIVE COVERAGE   | 8,10   | ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS MINUS \$ SEE SCHEDULE Ded. FOR EACH COVERED AUTO. BUT NO DED. APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING. ††† | \$ 3,320.00  |
|   | SPECIFIED CAUSES OF LOSS COVERAGE  |  | \$ Ded. FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM †††  | \$           |
|   | COLLUSION COVERAGE   | 8,10   | \$ SEE SCHEDULE Deductible FOR EACH COVERED AUTO †††  | \$ 12,633.00 |
|   | TOWING AND LABOR<br>(Not Available in California)  |  | \$ for each disablement of a private passenger auto   | \$           |
| FORMS AND ENDORSEMENTS APPLYING TO THIS COVERAGE PART AND MADE A PART OF THIS POLICY AT TIME OF ISSUE:  |  |  | PREMIUM FOR ENDORSEMENTS  | \$ 732.00    |
| <b>SEE SCHEDULE OF FORMS AND ENDORSEMENTS</b>   |  |  | ESTIMATED TOTAL PREMIUM   | \$ 88,695.00 |
| <b>ITEM THREE - SCHEDULE OF COVERED AUTOS YOU OWN: SEE SCHEDULE OF COVERED AUTOS YOU OWN</b>  |  |  |   |              |
| †† (or equivalent No-fault cov.) ††† See ITEM FOUR for hired or borrowed "autos".   |  |  |   |              |

Countersigned:

Date: \_\_\_\_\_ By: \_\_\_\_\_

Authorized Representative

THIS COMMON POLICY DECLARATION AND THE SUPPLEMENTAL DECLARATION(S), TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PARTS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, COMPLETE THE ABOVE NUMBERED POLICY.

U-CA-D-370-A (10/01)



Part 2

POLICY NUMBER: BAP 4896511-02

BUSINESS AUTO DECLARATIONS (Continued)

**ITEM FOUR - SCHEDULE OF HIRED OR BORROWED COVERED AUTO COVERAGE AND PREMIUMS. LIABILITY COVERAGE - RATING BASIS, COST OF HIRE**

| STATE         | ESTIMATED COST OF HIRE FOR EACH STATE | RATE PER EACH \$100 COST OF HIRE | FACTOR (IF LIAB. COV. IS PRIMARY) | PREMIUM |
|---------------|---------------------------------------|----------------------------------|-----------------------------------|---------|
| AL            | IF ANY                                | \$ 1.919                         |                                   | \$ INCL |
|               |                                       |                                  |                                   | \$      |
|               |                                       |                                  |                                   | \$      |
| TOTAL PREMIUM |                                       |                                  |                                   | \$ INCL |

Cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners or employees or their family member(s)). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

**PHYSICAL DAMAGE COVERAGE**

| COVERAGES                | ACTUAL CASH VALUE, COST OF REPAIRS OR | LIMIT OF INSURANCE<br>THE MOST WE WILL PAY, DEDUCTIBLE  | ESTIMATED ANNUAL<br>COST OF HIRE | RATE | PREMIUM |
|--------------------------|---------------------------------------|---|----------------------------------|------|---------|
| COMPREHENSIVE            |                                       | \$ 50,000 WHICHEVER IS LESS, MINUS \$ 1,000 DEDUCTIBLE FOR EACH COVERED AUTO, BUT NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING | 50,000                           |      | \$ INCL |
| SPECIFIED CAUSES OF LOSS |                                       | \$ WHICHEVER IS LESS, MINUS \$25 DEDUCTIBLE FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM                                  |                                  |      | \$      |
| COLLUSION                |                                       | \$ 50,000 WHICHEVER IS LESS, MINUS \$ 1,000 DEDUCTIBLE FOR EACH COVERED AUTO  | 50,000                           |      | \$ INCL |
| TOTAL PREMIUM \$         |                                       |   |                                  |      | INCL    |

PHYSICAL DAMAGE COVERAGE for covered "autos" you hire or borrow is excess unless indicated below by "x".

☒ If this box is checked, PHYSICAL DAMAGE COVERAGE applies on a direct primary basis and for purposes of the condition entitled OTHER INSURANCE, any covered "auto" you hire or borrow is deemed to be a covered "auto" you own.

**ITEM FIVE - SCHEDULE FOR NON-OWNERSHIP LIABILITY**

| NAMED INSURED'S BUSINESS           | RATING BASIS         | NUMBER | PREMIUM |
|------------------------------------|----------------------|--------|---------|
| Other than a Social Service Agency | Number of Employees  | 75     | \$ INCL |
|                                    | Number of Partners   |        | \$      |
| Social Service Agency              | Number of Employees  |        | \$      |
|                                    | Number of Volunteers |        | \$      |
|                                    |                      |        | \$ INCL |

**ITEM SIX - SCHEDULE FOR GROSS RECEIPTS OR MILEAGE BASIS - LIABILITY COVERAGE - PUBLIC AUTO OR LEASING RENTAL CONCERNS**

| Estimated Yearly<br><input type="checkbox"/> Gross Receipts<br><input type="checkbox"/> Mileage | RATES   |                       | PREMIUMS           |                       |
|---|---|-----------------------|--------------------|-----------------------|
|   | <input type="checkbox"/> Per \$100 of Gross Receipts<br><input type="checkbox"/> Per Mile |                       | LIABILITY COVERAGE | AUTO MEDICAL PAYMENTS |
|   | LIABILITY COVERAGE  | AUTO MEDICAL PAYMENTS | \$                 | \$                    |
|   |   |                       | \$                 | \$                    |
|   |   |                       | \$                 | \$                    |
|   |   |                       | \$                 | \$                    |
| TOTAL PREMIUMS \$   |   |                       | \$                 |                       |
| MINIMUM PREMIUMS \$   |   |                       | \$                 |                       |

When used as a premium basis:

**FOR PUBLIC AUTOS**

**Gross Receipts** means the total amount to which you are entitled for transporting passengers, mail or merchandise during the policy period regardless of whether you or any other carrier originate the transportation. Gross Receipts does not include:

- A. Amounts you pay to railroads, steamship lines, airlines and other motor carriers operating under their own ICC or PUC permits.
- B. Advertising Revenue.
- C. Taxes which you collect as a separate item and remit directly to a governmental division.
- D. C.O.D. collections for cost of mail or merchandise including collection fees.

Mileage means the total live and dead mileage of all revenue producing units operated during the policy period.

**FOR RENTAL OR LEASING CONCERNS**

**Gross Receipts** means the total amount to which you are entitled for the leasing or rental of "autos" during the policy period and includes taxes except those taxes which you collect as a separate item and remit directly to a governmental division.

**Mileage** means the total of all live and dead mileage developed by all the "autos" you leased or rented to others during the policy period.

**PREMIUM AND REPORTS AGREEMENT - COMPOSITE RATED POLICIES**

This endorsement changes the policy. Please read it carefully.

This endorsement modifies insurance provided under the:

**BUSINESS AUTO COVERAGE FORM****SCHEDULE****1. Unit Of Exposure (Check One):**

- ☒ per licensed "auto" ☐ per \$1,000 gross sales ☐ per 10,000 miles  
☐ per \$1,000 payroll ☐ per 1,000 gallons ☐ per other, as described below:

| 2. Coverage Unit of Exposure | Rate(s)  | Estimated Premium(s) |
|------------------------------|----------|----------------------|
| LIAB (67 POWER UNITS)        | \$1,093  | \$73,231             |
| PHYS DMG (58 POWER UNITS)    | \$ 254   | \$14,732             |
| LIAB/PHYS DMG (TRAILERS)     | INCLUDED | INCLUDED             |
|                              |          |                      |
|                              |          |                      |

**3. Deposit Premium: INCL****4. Minimum Premium: \$69,044**

Condition 6, Premium Audit, of Part B, General Conditions, of Section IV, Business Auto Conditions, is replaced by the following:

**6. Premium Audit**

- We will compute all premiums for this Coverage Part according to our rules and the composite rates shown in the Schedule above or attached hereto.
- For policies other than Annual Reporting, the deposit premium shown in the Schedule is due and payable on the first day of the policy period. The first Named Insured will pay, within 20 days following the mailing or delivery of the statement of audited premium for each audit period, the earned premium due.
- Within 180 days after this Coverage Part expires we will conduct an audit, which may not be waived. We will compute the earned premium for the policy period by multiplying the composite rate against the total developed exposure. If the earned premium is greater than the sum of the deposit premiums, the first Named Insured will pay us the excess; if less, we will return the unearned portion to the first Named Insured. However, the earned premium will not be less than the greater of 80% of the estimated annual premium, or the Minimum Premium shown in the Schedule.

- The first Named Insured must maintain records

of the information we need for premium computation and send us copies at such times as we may request.

**e. The units of exposure shown in the Schedule are defined as follows:**

- Gallons means the total number of gallons of liquid petroleum gases invoiced on any basis to any customer, whether or not the insured actually takes possession of such gases.
- Gross sales means gross sales invoiced, before discounts, but does not include taxes collected for any governmental unit.
- Licensed "auto" means the final average of the number of "autos" at policy inception and the number of "autos" at policy termination.
- Miles means the total mileage driven during the policy period by all licensed "autos" owned by you.
- Other means the unit of exposure defined in the Unit of Exposure endorsement attached to this policy.
- Payroll means total remuneration for all employees of the insured as defined in our rating manuals.

COMMERCIAL AUTO  
CA 00 01 10 01**BUSINESS AUTO COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

**SECTION I - COVERED AUTOS**

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

**A. Description Of Covered Auto Designation Symbols**

| Symbol | Description Of Covered Auto Designation Symbols               |  |
|--------|---|--|
| 1      | Any "Auto"  |  |
| 2      | Owned "Autos" Only  | Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.  |
| 3      | Owned Private Passenger "Autos" Only                          | Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.  |
| 4      | Owned "Autos" Other Than Private Passenger "Autos" Only       | Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.   |
| 5      | Owned "Autos" Subject To No-Fault                             | Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.                   |
| 6      | Owned "Autos" Subject To A Compulsory Uninsured Motorists Law | Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.        |
| 7      | Specifically Described "Autos"                                | Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).   |
| 8      | Hired "Autos" Only  | Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.  |
| 9      | Nonowned "Autos" Only   | Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs. |

**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols 1, 2, 3, 4, 5 or 6 are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol 7 is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**SECTION II - LIABILITY COVERAGE****A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this Insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this Insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this Insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
  - (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
  - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
  - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

In addition to the Limit of Insurance, we will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

### b. Out-Of-State Coverage Extensions

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

**5. Fellow Employee**

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

**6. Care, Custody Or Control**

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

**7. Handling Of Property**

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

**8. Movement Of Property By Mechanical Device**

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

**9. Operations**

"Bodily injury" or "property damage" arising out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

**10. Completed Operations**

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraphs a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.

- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

**11. Pollution**

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".



Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

#### 12. War

"Bodily Injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

#### 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

#### C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage Endorsement, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

### SECTION III - PHYSICAL DAMAGE COVERAGE

#### A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

##### a. Comprehensive Coverage

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

##### b. Specified Causes Of Loss Coverage

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

##### c. Collision Coverage

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

#### 2. Towing

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

#### 3. Glass Breakage - Hitting A Bird Or Animal - Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

**4. Coverage Extensions****a. Transportation Expenses**

We will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**b. Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

**B. Exclusions**

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

**b. War Or Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.
3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:
  - a. Wear and tear, freezing, mechanical or electrical breakdown.
  - b. Blowouts, punctures or other road damage to tires.
4. We will not pay for "loss" to any of the following:
  - a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
  - b. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.
  - c. Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.
  - d. Any accessories used with the electronic equipment described in Paragraph c. above.



Exclusions 4.c. and 4.d. do not apply to:

- a. Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or
- b. Any other electronic equipment that is:
  - (1) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
  - (2) An integral part of the same unit housing any sound reproducing equipment described in a. above and permanently installed in the opening of the dash or console of the covered "auto" normally used by the manufacturer for installation of a radio.

- 5. We will not pay for "loss" to a covered "auto" due to "diminution in value".

#### C. Limit Of Insurance

- 1. The most we will pay for "loss" in any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
- 2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
- 3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

#### D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

#### SECTION IV - BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

##### A. Loss Conditions

##### 1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

##### 2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
  - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
  - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
  - (4) Authorize us to obtain medical records or other pertinent information.

- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

c. If there is "loss" to a covered "auto" or its equipment you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

### 3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

### 4. Loss Payment - Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

### 5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

## B. General Conditions

### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

### 2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

### 4. No Benefit To Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

### 5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own.
- (2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

#### 6. Premium Audit

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

#### 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico;
- d. Canada; and
- e. Anywhere in the world if:
- (1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
  - (2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

#### 8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

#### SECTION V - DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means a land motor vehicle, "trailer" or semi-trailer designed for travel on public roads but does not include "mobile equipment".
- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.
- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement; or
2. Any claim or "suit" by or on behalf of a governmental authority demanding

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
- (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured";
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";

- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. or 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

H. "Insured contract" means:

- 1. A lease of premises;
- 2. A sidetrack agreement;
- 3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- 4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- 5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
- 6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing; or
- b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
- c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J. "Loss" means direct and accidental loss or damage.

- K. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler treads;
  4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. Power cranes, shovels, loaders, diggers or drills; or
    - b. Road construction or resurfacing equipment such as graders, scrapers or rollers.
  5. Vehicles not described in Paragraphs 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - b. Cherry pickers and similar devices used to raise or lower workers.
  6. Vehicles not described in Paragraphs 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
    - a. Equipment designed primarily for:
      - (1) Snow removal;
      - (2) Road maintenance, but not construction or resurfacing; or
      - (3) Street cleaning;
    - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
    - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.
- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, re-conditioned or reclaimed.
- M. "Property damage" means damage to or loss of use of tangible property.
- N. "Suit" means a civil proceeding in which:
1. Damages because of "bodily injury" or "property damage"; or
  2. A "covered pollution cost or expense", to which this insurance applies, are alleged.
- "Suit" includes:
- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- P. "Trailer" includes semitrailer.



COMMERCIAL AUTO  
CA 99 03 07 97

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **AUTO MEDICAL PAYMENTS COVERAGE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### **A. Coverage**

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an "insured" who sustains "bodily injury" caused by "accident". We will pay only those expenses incurred, for services rendered within three years from the date of the "accident".

### **B. Who Is An Insured**

1. You while "occupying" or, while a pedestrian, when struck by any "auto".
2. If you are an individual, any "family member" while "occupying" or, while a pedestrian, when struck by any "auto".
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

### **C. Exclusions**

This insurance does not apply to any of the following:

1. "Bodily injury" sustained by an "insured" while "occupying" a vehicle located for use as a premises.
2. "Bodily injury" sustained by you or any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by you or furnished or available for your regular use.
3. "Bodily injury" sustained by any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by or furnished or available for the regular use of any "family member".
4. "Bodily injury" to your "employee" arising out of and in the course of employment by you. How-

ever, we will cover "bodily injury" to your domestic "employees" if not entitled to workers' compensation benefits. For the purposes of this endorsement, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

5. "Bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos" unless that business is yours.
6. "Bodily injury" caused by declared or undeclared war or insurrection or any of their consequences.
7. "Bodily injury" to anyone using a vehicle without a reasonable belief that the person is entitled to do so.
8. "Bodily Injury" sustained by an "insured" while "occupying" any covered "auto" while used in any professional racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply to any "bodily injury" sustained by an "insured" while the "auto" is being prepared for such a contest or activity.

### **D. Limit Of Insurance**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" for each "insured" injured in any one "accident" is the Limit Of Insurance for Auto Medical Payments Coverage shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage and any Liability Coverage Form, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

**E. Changes In Conditions**

The Conditions are changed for Auto Medical Payments Coverage as follows:

1. The Transfer Of Rights Of Recovery Against Others To Us Condition does not apply.
2. The reference in Other Insurance in the Business Auto and Garage Coverage Forms and Other Insurance - Primary And Excess Insurance Provisions in the Truckers and Motor Carrier Coverage Forms to "other collectible insurance" applies only to other collectible auto medical payments insurance.

**F. Additional Definitions**

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.

POLICY NUMBER: BAP 4896511-02

COMMERCIAL AUTO  
CA 03 01 12 93**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****DEDUCTIBLE LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|                       |                  |
|-----------------------|------------------|
| Endorsement effective |                  |
| Named Insured         | Countersigned by |

(Authorized Representative)

**SCHEDULE**

|                               |    |                      |
|-------------------------------|----|----------------------|
| Liability Deductible:         | \$ | 5,000 Per "Accident" |
| "Bodily Injury" Deductible:   | \$ | Per Person           |
|                               | \$ | Per "Accident"       |
| "Property Damage" Deductible: | \$ | Per "Accident"       |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

LIABILITY COVERAGE is changed as follows:

**A. LIABILITY COVERAGE DEDUCTIBLE**

The damages caused in any one "accident" that would otherwise be payable under LIABILITY COVERAGE will be reduced by the Liability Deductible shown in the Schedule prior to the application of the LIMIT OF INSURANCE provision.

**B. BODILY INJURY LIABILITY COVERAGE DEDUCTIBLES****1. Per Person**

The damages that would otherwise be payable under LIABILITY COVERAGE FOR "bodily injury" sustained by any one person, in any one "accident", will be reduced by the "Bodily Injury" Per Person Deductible shown in the Schedule prior to the application of the LIMIT OF INSURANCE provision.

**2. Per Accident**

The damages that would otherwise be payable under LIABILITY COVERAGE for all "bodily injury" caused in any one "accident" will be reduced by the "Bodily Injury" Per "Accident" Deductible shown in the Schedule prior to the application of the LIMIT OF INSURANCE provision.

**C. PROPERTY DAMAGE LIABILITY COVERAGE DEDUCTIBLE**

The damages that would otherwise be payable under LIABILITY COVERAGE FOR "property damage" caused in any one "accident" will be reduced by the "Property Damage" Per "Accident" Deductible shown in the Schedule prior to the application of the LIMIT OF INSURANCE provision.

**D. OUR RIGHT TO REIMBURSEMENT**

To settle any claim or "suit" we may pay all or any part of any deductible shown in the Schedule. If this happens, you must reimburse us for the deductible or the part of the deductible we paid.



POLICY NUMBER:BAP 4896511-02

COMMERCIAL AUTO  
CA 21 59 12 02**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ALABAMA UNINSURED MOTORISTS COVERAGE**

For a covered "auto" licensed or principally garaged in, or "garage operations" conducted in Alabama, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|                        |  |
|------------------------|--|
| Endorsement Effective: | Countersigned By:<br><br>(Authorized Representative) |
| Named Insured:         |  |

**SCHEDULE**

|                           |                 |
|---------------------------|-----------------|
| <b>LIMIT OF INSURANCE</b> |                 |
| \$ 1,000,000              | Each "Accident" |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**A. Coverage**

1. We will pay all sums the "insured" is legally entitled to recover as damages from the owner or driver of an "uninsured motor vehicle". The damages must result from "bodily injury" sustained by the "insured" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle".
2. No judgment for damages arising out of a "suit" brought against the owner or operator of an "uninsured motor vehicle" is binding on us unless we:
  - a. Received reasonable notice of the pendency of the "suit" resulting in the judgment; and
  - b. Had a reasonable opportunity to protect our interest in the "suit".

However, if reasonable notice has not been given to us, we have the option to accept the judgment in the suit as binding on us.

**B. Who Is An Insured**

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds":
  - a. The Named Insured and any "family members".
  - b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
  - c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":

- a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
- b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

#### C. Exclusions

This insurance does not apply to:

1. Any claim settled without our consent.

However, this exclusion does not apply to a settlement made with the insurer of a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle".

2. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
3. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.

#### D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the accident, the most we will pay for all damages resulting from any one "accident" is the limit of Uninsured Motorists Insurance shown in the declarations. If there is more than one covered "auto", our limit of insurance for any one "accident" is the sum of the limits applicable to each covered "auto", subject to a maximum of three covered "autos".
2. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Liability Coverage Form or Medical Payments Coverage Endorsement attached to this Coverage Part.

We will not make a duplicate payment under this Coverage Form for any element of "loss" for which payment has been made by or for anyone who is legally responsible.

We will not pay for any element of "loss" if a person is entitled to receive payment for the same element of "loss" under any workers' compensation, disability benefits or similar law.

3. We will reduce the "insured's" total damages by any amount available to that "insured", under any bodily injury liability bonds or policies applicable to the vehicle described in Paragraph b. of the definition of "uninsured motor vehicle", that such "insured" did not recover as a result of a settlement between that "insured" and the insurer of such vehicle. However, any reduction of the "insured's" total damages will not reduce the limit of liability for this coverage.

This Paragraph (D.3.) shall not apply if we advance payment to the "insured" in an amount equal to the tentative settlement with the insurer of the vehicle described in Paragraph b. of the definition of "uninsured motor vehicle".

#### E. Changes In Conditions

The conditions are changed for Uninsured Motorists Coverage as follows:

1. The reference in Other Insurance in the Business Auto and Garage Coverage Forms and Other Insurance - Primary And Excess Insurance Provisions in the Truckers and Motor Carrier Coverage Forms to "other collectible insurance" applies only to other collectible uninsured motorists insurance.
2. Duties In The Event Of Accident, Claim, Suit Or Loss is changed by adding the following:
  - a. Promptly notify the police if a hit-and-run driver is involved, and
  - b. Promptly send us copies of the legal papers if a "suit" is brought.
  - c. A person seeking Uninsured Motorists Coverage must also promptly notify us in writing of a tentative settlement between the "insured" and the insurer of a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle" and allow us 30 days to advance payment to that insured in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle".

**3. Transfer Of Rights Of Recovery Against Others To Us** is changed by adding the following:

Our rights do not apply under this provision with respect to damages caused by an "accident" with a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle" if we:

- a. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle"; and
- b. Fail to advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification.

If we advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification:

- a. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Uninsured Motorists Coverage; and
- b. We have a right to recover the advanced payment.

If we make any payment and the "insured" recovers from another party, the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid.

**4. The Two Or More Coverage Forms Or Policies Issued By Us General Condition** does not apply to an individual Named Insured or any "family member".

**5. THE FOLLOWING CONDITION IS ADDED:  
ARBITRATION**

- A. IF WE AND AN "INSURED" DISAGREE WHETHER THE "INSURED" IS LEGALLY ENTITLED TO RECOVER DAMAGES FROM THE OWNER OR DRIVER OF AN "UNINSURED MOTOR VEHICLE" OR DO NOT AGREE AS TO THE AMOUNT OF DAMAGES THAT ARE RECOVERABLE BY THAT "INSURED", THEN THE MATTER MAY BE ARBITRATED. HOWEVER, DISPUTES CONCERNING COVERAGE UNDER THIS ENDORSEMENT MAY NOT BE ARBITRATED. BOTH PARTIES MUST AGREE TO ARBITRATION. IF SO AGREED, EACH PARTY WILL SELECT AN ARBITRATOR. THE TWO ARBITRATORS WILL SELECT A THIRD. IF THEY CANNOT AGREE WITHIN 30 DAYS, EITHER MAY REQUEST THAT SELECTION BE MADE BY A JUDGE OF A COURT HAVING JURISDICTION. THE ARBITRATION PROCEEDINGS SHALL COMMENCE WITHIN ONE YEAR AFTER THE DATE BOTH PARTIES AGREE TO SETTLE A DISPUTE BY ARBITRATION. ARBITRATION EXPENSES WILL BE DETERMINED BY THE ARBITRATOR ACCORDING TO ALABAMA LAW.

UNLESS BOTH PARTIES AGREE OTHERWISE, ARBITRATION WILL TAKE PLACE IN THE COUNTY IN WHICH THE "INSURED" LIVES. LOCAL RULES OF LAW AS TO ARBITRATION PROCEDURE AND EVIDENCE WILL APPLY. A DECISION AGREED TO BY TWO OF THE ARBITRATORS WILL BE BINDING.

- B. THIS ARBITRATION PROVISION WILL NOT APPLY IF LEGAL ACTION HAS BEEN COMMENCED BY THE "INSURED" AGAINST THE OWNER OR OPERATOR OF AN "UNINSURED MOTOR VEHICLE".

**F. Additional Definitions**

As used in this endorsement:

1. "Family member" means a person related to an individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured's household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.
3. "Uninsured motor vehicle" means a land motor vehicle or "trailer":
  - a. For which no liability bond or policy at the time of an "accident" provides at least the amounts required by the applicable law where a covered "auto" is principally garaged;
  - b. That is an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle or "trailer" for which the sum of all liability bonds or policies at the time of an "accident" provides a limit that is less than the amount an "insured" is legally entitled to recover as damages caused by the "accident";
- c. For which an insuring or bonding company denies coverage or is or becomes insolvent; or
- d. That is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must either:
  - (1) Hit an "insured", a covered "auto" or a vehicle an "insured" is "occupying"; or
  - (2) Cause "bodily injury" to an "insured" without hitting an "insured", a covered "auto" or a vehicle an "insured" is "occupying".

However, "uninsured motor vehicle" does not include any vehicle:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;
- b. Designed for use mainly off public roads while not on public roads.

COMMERCIAL AUTO  
CA 00 38 12 02**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****WAR EXCLUSION**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
 BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
 MOTOR CARRIER COVERAGE FORM  
 SINGLE INTEREST AUTOMOBILE PHYSICAL DAMAGE INSURANCE POLICY  
 TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A. Changes In Liability Coverage**

The War exclusion under Paragraph B. Exclusions of Section II – Liability Coverage is replaced by the following:

**WAR**

"Bodily injury", "property damage" or "covered pollution cost or expense" arising directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**B. Changes In Garagekeepers Coverage**

If the Garagekeepers Coverage endorsement or the Garagekeepers Coverage – Customers' Sound Receiving Equipment endorsement is attached, the following exclusion is added:

We will not pay for "loss" caused by or resulting from the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss":

**WAR**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**C. Changes In Auto Medical Payments**

If the Auto Medical Payments Coverage endorsement is attached, then Exclusion C.6. is replaced by the following:

6. "Bodily injury", arising directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**D. Changes In Uninsured/Underinsured Motorists Coverage**

If Uninsured and/or Underinsured Motorists Coverage is attached, then the following exclusion is added:

This insurance does not apply to:

**WAR**

1. "Bodily injury" or "property damage", if applicable, arising directly or indirectly, out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**E. Changes In Personal Injury Protection Coverage**

1. If Personal Injury Protection, no-fault, or other similar coverage is attached, and:
  - a. Contains, in whole or in part, a War exclusion, that exclusion is replaced by Paragraph 2.
  - b. Does not contain a war exclusion, Paragraph 2. is added.
2. This insurance does not apply to:

**WAR**

"Bodily injury" or "property damage", if applicable, arising directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**F. Changes In Single Interest Automobile Physical Damage Insurance Policy**

The War exclusion is replaced by the following:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

POLICY NUMBER: BAP 4896511-02

COMMERCIAL AUTO  
CA 20 01 10 01**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****LESSOR – ADDITIONAL INSURED AND LOSS PAYEE**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
 BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
 GARAGE COVERAGE FORM  
 MOTOR CARRIER COVERAGE FORM  
 TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|                        |  |
|------------------------|--|
| Endorsement Effective: | Countersigned By:<br><br>(Authorized Representative) |
| Named Insured:         |  |

**SCHEDULE**

|  |                                   |    |       |
|--|-----------------------------------|----|-------|
| Insurance Company                            | ZURICH AMERICAN INSURANCE COMPANY |    |       |
| Policy Number                                | BAP 4896511-02                    |    |       |
| Effective Date                               | 06-01-05                          |    |       |
| Expiration Date                              | 06-01-06                          |    |       |
| Named Insured                                | BOAN CONTRACTING CO., INC.        |    |       |
| Address                                      | P.O. BOX 778<br>GREENVILLE        | AL | 36037 |
| Additional Insured (Lessor)                  | ALL LESSORS                       |    |       |
| Address                                      |                                   |    |       |
| Designation or Description of "Leased Autos" | ANY LEASED VEHICLE                |    |       |

| Coverages  | Limit Of Insurance   |
|--|--|
| Liability  | 1000000 Each "Accident"  |
| Personal Injury Protection (or equivalent no-fault coverage) |  |
| Comprehensive  | ACTUAL CASH VALUE OR COST OF REPAIR WHICHEVER IS LESS;<br>MINUS: 1000 For Each Covered "Leased Auto" |
| Collision  | ACTUAL CASH VALUE OR COST OF REPAIR WHICHEVER IS LESS;<br>MINUS: 1000 For Each Covered "Leased Auto" |
| Specified Causes of Loss                                     | ACTUAL CASH VALUE OR COST OF REPAIR WHICHEVER IS LESS;<br>MINUS: For Each Covered "Leased Auto"      |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**A. Coverage**

1. Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow. For a covered "auto" that is a "leased auto" Who Is An Insured is changed to include as an "insured" the lessor named in the Schedule.
2. The coverages provided under this endorsement apply to any "leased auto" described in the Schedule until the expiration date shown in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto", whichever occurs first.

**B. Loss Payable Clause**

1. We will pay, as interest may appear, you and the lessor named in this endorsement for "loss" to a "leased auto".
2. The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
3. If we make any payment to the lessor, we will obtain his or her rights against any other party.

**C. Cancellation**

1. If we cancel the policy, we will mail notice to the lessor in accordance with the Cancellation Common Policy Condition.
  2. If you cancel the policy, we will mail notice to the lessor.
  3. Cancellation ends this agreement.
- D. The lessor is not liable for payment of your premiums.**

**E. Additional Definition**

As used in this endorsement:

"Leased auto" means an "auto" leased or rented to you, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.



COMMERCIAL AUTO  
CA 99 44 12 93

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **LOSS PAYABLE CLAUSE**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A. We will pay, as interest may appear, you and the loss payee named in the policy for "loss" to a covered "auto".
  - B. The insurance covers the interest of the loss payee unless the "loss" results from conversion, secretion or embezzlement on your part.
  - C. We may cancel the policy as allowed by the CANCELLATION Common Policy Condition.
  - D. If we make any payments to the loss payee, we will obtain his or her rights against any other party.
- Cancellation ends this agreement as to the loss payee's interest. If we cancel the policy we will mail you and the loss payee the same advance notice.

POLICY NUMBER: BAP 4896511-02

COMMERCIAL AUTO  
CA 99 54 07 97**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****COVERED AUTO DESIGNATION SYMBOL**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
 GARAGE COVERAGE FORM  
 MOTOR CARRIER COVERAGE FORM  
 TRUCKERS COVERAGE FORM  
 BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below:

|                        |  |
|------------------------|--|
| Endorsement Effective: | Countersigned By:<br><br><br>(Authorized Representative) |
| Named Insured:         |  |

**Section I – Covered Autos** is amended by adding the following:

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols may be used (in addition to the numerical symbols described in the Coverage Form) to describe the "autos" that may be covered "autos". The entry of one of these symbols next to a coverage on the Declarations will designate the only "autos" that are covered "autos".

| Symbol                                       | Description Of Covered Auto Designation Symbols                  |
|--|--|
| For use with the Business Auto Coverage Form |  |
| 10   | = AUTOMATIC PHYSICAL DAMAGE COVERAGE FOR VEHICLES 1990 AND NEWER |
| For use with the Garage Coverage Form        |  |
| 32   | =  |
| For use with the Truckers Coverage Form      |  |
| 51   | =  |
| 52   | =  |

| Symbol |   | Description Of Covered Auto Designation Symbols              |  |
|--------|---|--|--|
|        |   | For use with the Business Auto Physical Damage Coverage Form |  |
| 7      | = |  |  |
|        |   |  |  |
|        |   | For use with the Motor Carrier Coverage Form                 |  |
| 72     | = |  |  |
| 73     | = |  |  |

**Commercial Auto Insurance  
Endorsement**

Insurance for this coverage is provided by:  
ZURICH AMERICAN INSURANCE COMPANY

Policy Number: BAP 4896511-02

Renewal of Number: BAP 4896511-01

**PHYSICAL DAMAGE DEDUCTIBLES ENDORSEMENT**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED BY THE FOLLOWING:  
BUSINESS AUTO COVERAGE FORM

**SCHEDULE OF PHYSICAL DAMAGE DEDUCTIBLES**

| <u>COVERAGE</u>                | <u>VEHICLE DESCRIPTION</u>   | <u>DEDUCTIBLE</u> |
|--------------------------------|--|-------------------|
| COMPREHENSIVE AND<br>COLLISION | PRIVATE PASSENGER (COST NEW UNDER \$75,000)<br>LIGHT TRUCKS & TRAILERS | \$1,000           |
| COMPREHENSIVE AND<br>COLLISION | PRIVATE PASSENGER (COST NEW \$75,000 & OVER)<br>MEDIUM TRUCKS          | \$2,000           |
| COMPREHENSIVE AND<br>COLLISION | HEAVY TRUCKS, EXTRA HEAVY TRUCKS &<br>TRUCK TRACTORS                   | \$3,000           |

# **EXHIBIT 2**

1

1 IN THE UNITED STATES DISTRICT COURT FOR  
2 THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION  
4

5 CASE NUMBER: 2:07-CV-216-MEF  
6

7 ZURICH AMERICAN INSURANCE COMPANY,

8 Plaintiff,

9 vs.

10 JUNIORETTE GRIFFIN SMITH, as Administratrix of  
11 the Estate of Dale Smith, deceased,  
12 Defendant.  
13

14 \* \* \* \* \*

15

16 The deposition of Juniorette Griffin  
17 Smith, taken pursuant to Alabama Rules of  
18 Civil Procedure before Sue Anne Casey, Court  
19 Reporter and Notary Public, State at Large, at  
20 the office of Woodard, Patel & Sledge, 1213  
21 East Three Notch Street, Andalusia, Alabama on  
22 the 5th day of March, 2008 commencing at  
23 approximately 3:15 p.m.

1                   S T I P U L A T I O N

2

3                   IT IS STIPULATED by and between  
4   Counsel for the parties that this deposition  
5   be taken at this time by Sue Anne Casey, Court  
6   Reporter and Notary Public, State at Large,  
7   who is to act as commissioner without formal  
8   issuance of commission to her; that said  
9   deposition be taken down stenographically,  
10   transcribed and certified by the commissioner.

11

12                  Except for objections as to the form  
13   of the questions, no objections need be made  
14   at the time of the taking of the deposition by  
15   either party, but objections may be interposed  
16   by either party at the time the deposition is  
17   read into evidence, which shall be ruled upon  
18   by the Court on the trial of the cause upon  
19   the grounds of objection, then and there  
20   assigned.

21

22                  The reading and signing of the  
23   deposition is waived.

1                   A P P E A R A N C E S

2

3

4

5     PLAINTIFF:

6     By J. David Moore

7     WALSTON, WELLS & BIRCHALL, LLP

8     1819 Fifth Avenue North

9     Suite 1100

10    Birmingham, AL 35203

11

12

13

14

15    DEFENDANT:

16    By Christopher M. Sledge

17    WOODARD, PATEL & SLEDGE

18    1213 East Three Notch Street

19    Andalusia, AL 36420

20

21

22

23



1 I N D E X

2

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5 EXAMINATION BY: PAGE NO:

6 Mr. Moore 5

7

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12 \* \* \* \* \*

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17 E X H I B I T S

18

19

20 (Whereupon, no exhibits were marked.)

21

22

23

1 JUNIORETTE GRIFFIN SMITH

2 being first duly sworn, was examined

3 and testified as follows:

4

5

6 EXAMINATION BY MR. MOORE:

7 Q. Ms. Smith, my name is David Moore.

8 We just met. And I appreciate your coming in

9 today to give your deposition for us in this

10 case. Could you state your full name for the

11 record, please?

12 A. Juniorette Griffin Smith.

13 Q. And what is your address?

14 A. 25515 Highway 29 North, Andalusia,

15 Alabama 36421.

16 Q. And how long have you lived at that

17 address?

18 A. I've lived there about two years

19 now. We lived there previously for about

20 twelve years. It's a home property.

21 Q. Okay. In between there, was

22 there --

23 A. We lived up the road about four

1 miles.

2 Q. Okay. Through the past -- How long  
3 have you lived in Andalusia?

4 A. Probably sixteen years. Around  
5 sixteen years.

6 Q. What's your social security number,  
7 please, ma'am?

8 A. 419-84-7055.

9 Q. Thank you. Ms. Smith, have you  
10 ever given a deposition before?

11 A. No, sir.

12 Q. Okay. I'm here to ask you  
13 questions, and you've been sworn in as you  
14 know. I will try my best to ask questions  
15 that are clear and short. I will probably  
16 fail several times. If you don't understand  
17 anything that I ask, please tell me.

18 A. Yes, sir.

19 Q. And I'll try to rephrase it so that  
20 we can all know that we're on the same page.  
21 If you don't say anything to me, I'll assume  
22 that you understood the question. Is that  
23 fair?

1           A.    Yes, sir.

2           Q.    If you need to take a break at any  
3   time, please just say so, for any reason.  
4   We're not here for an endurance test.  I'm  
5   hopeful this won't take very long.  But just  
6   let me know.  And I do want to say that I  
7   anticipate we'll have to ask -- I'll have to  
8   ask you some questions about the accident that  
9   resulted in your late husband's death.  I'm  
10   sorry to have to do that today.  I understand  
11   that may be difficult for you.  And I will  
12   understand.  So please just let me know if we  
13   need to take a break at any time.

14          A.    Yes, sir.

15          Q.    Ms. Smith, have you reviewed any  
16   particular documents in preparation to be  
17   deposed today?

18          A.    What do you mean particular  
19   documents?

20          Q.    Yes, ma'am.

21          A.    Such as --

22          Q.    Well, any correspondents or a copy  
23   of the policy that's at issue, any papers at

1 all.

2 A. No, sir.

3 Q. Other than your lawyer, have you  
4 discussed the claim under the Zurich policy at  
5 issue with anyone in preparation of being  
6 deposed today?

7 A. No, sir.

8 Q. Okay. You are the widow of Roger  
9 Dale Smith; correct?

10 A. Yes, sir.

11 Q. How long were you and Mr. Smith  
12 married?

13 A. Twenty-seven years.

14 Q. So that puts your date of marriage  
15 when?

16 A. 1978.

17 Q. Do you have any children?

18 A. Three children.

19 Q. And what are their names?

20 A. Griffin Lee Smith, Matthew Dale  
21 Smith and Kelly Par Smith.

22 Q. And how old are your children?

23 A. Griffin is twenty-seven and Matthew

1 will be twenty-five this month and Kelly is  
2 twenty-two.

3 Q. Do any of your children live here  
4 in Covington County?

5 A. Yes, sir. Matthew and Kelly too.

6 Q. Where does Griffin live?

7 A. Griffin lives in Auburn.

8 Q. Where does Matthew work?

9 A. He works at Acrohelipro.

10 Q. Okay. Acrohelipro?

11 A. Yes, sir.

12 Q. What do they do there?

13 A. He is a helicopter mechanic.

14 Q. Is that located here in Andalusia?

15 A. Between Andalusia and Opp, yes,  
16 sir.

17 Q. And what about Kelly? Where does  
18 she work?

19 A. She's a full-time student and she  
20 lives with me.

21 Q. Where is she in school?

22 A. LBW.

23 Q. And where do you work, Ms. Smith?

1           A.    I work at Straughn Elementary  
2   School.

3           Q.    Are you a teacher?

4           A.    Yes, sir.

5           Q.    I understood you were coming from  
6   work today.

7           A.    Yes, sir.

8           Q.    We appreciate that very much.  
9   What grade do you teach?

10          A.    First.

11          Q.    How long have you been a teacher  
12   there at Straughn?

13          A.    This is my fifteenth year.

14          Q.    At the same school?

15          A.    Yes, sir. Same grade.

16          Q.    Really?

17          A.    Yes, sir.

18          Q.    That's unusual too. Well, that's  
19   great.

20          A.    I love first grade.

21          Q.    I'm glad to hear that. My son's  
22   gonna be in first grade next year. I hope he  
23   gets lucky and had a teacher that loves first

1 grade.

2 Where did you go to high school?

3 A. Straughn High School.

4 Q. And you graduated when?

5 A. In 1978.

6 Q. And where did you go to college  
7 after that?

8 A. Troy State University.

9 Q. Do you still call it Troy State?

10 A. I do.

11 Q. I do too. And when did you  
12 graduate from Troy State?

13 A. 1991.

14 Q. What's your degree in?

15 A. Early childhood education.

16 Q. Have you taken any post-graduate  
17 courses or done any work in that regard?

18 A. No, sir.

19 Q. You have been appointed as the  
20 administratrix of your husband's estate; is  
21 that right?

22 A. Yes, sir.

23 Q. Can you recall when that was done?



1           A.    I don't recall.

2           Q.    That's quite all right. That's  
3 another thing I should have mentioned. If at  
4 any point if I ask you something and you don't  
5 remember, that's perfectly okay to just say I  
6 don't remember. I'd rather you say that than  
7 to try to guess.

8           A.    Yes, sir.

9           Q.    Now, as the administratrix of Mr.  
10 Smith's estate, you have made a claim for  
11 uninsured or underinsured motorist benefits  
12 under the insurance policy that was issued to  
13 Mr. Smith's employer; is that right?

14          A.    Yes, sir.

15          Q.    And who was his employer?

16          A.    Boan Contracting Company,  
17 Incorporated.

18          Q.    Have you ever seen a copy of that  
19 insurance policy?

20          A.    No, sir.

21          Q.    Okay. So you have never read it?

22          A.    No, sir.

23          Q.    To the best of your ability as you

1 sit here now -- I'm not trying to look for a  
2 legal conclusion from you at all -- what is  
3 your understanding of the basis for the claim  
4 that Mr. Smith was entitled to coverage under  
5 that policy?

6 A. To the best of my knowledge, I  
7 understand that uninsured motorist pays if  
8 there's an accident resulting in death even if  
9 the person was not in that vehicle.

10 Q. That's your understanding about  
11 what uninsured motorist coverage is in general  
12 terms?

13 A. Yes, sir.

14 Q. And what is it -- What is your  
15 understanding as to why Mr. Smith was entitled  
16 to those general benefits under the policy  
17 that was issued to Boan Contracting?

18 A. I'm trying to word this the right  
19 way. Because he was an insured driver and had  
20 a company truck that was just his truck that  
21 he might be subject to get the insurance from  
22 the uninsured motorist.

23 Q. When you say "a company truck that

1 was just his truck", do you mean a truck that  
2 was owned by Boan Contracting that was -- that  
3 he typically drove?

4 A. Okay. Yes, sir. It was bought for  
5 him, and he was the only one that had the  
6 keys. He was the foreman of the job.

7 Q. Right. As far as you knew, no  
8 other Boan employees drove that particular  
9 Boan truck.

10 A. No. He drove it back and forth  
11 home, and on weekends, it would sit at the  
12 house.

13 Q. Who owned the truck?

14 A. Boan Contracting owned the truck,  
15 yes, sir.

16 Q. Now, we're here, ma'am, in a  
17 deposition for a case that was filed  
18 originally by Zurich Insurance Company.  
19 You're aware of that; right?

20 A. (Witness nods head yes.)

21 Q. Do you understand that Zurich has  
22 brought this lawsuit to ask the judge to  
23 determine whether or not the claim that was

15

1 made under its policy issued to your husband's  
2 employer is due to be paid? Let me ask that a  
3 better way. Do you understand that Zurich is  
4 not asking the Court to award any money or  
5 damages from you to Zurich in this matter?

6 A. Yes, sir. I think I understand  
7 that.

8 Q. I'm sure you understand that;  
9 right?

10 A. Yes, sir.

11 Q. I just want to make sure that we're  
12 all on the same page. You understand that  
13 Zurich is not seeking any money or anything  
14 like that from you?

15 A. Yes, sir.

16 Q. And is it correct that the claims  
17 that you have made in this lawsuit are on  
18 behalf of the your husband's estate as opposed  
19 to on your behalf personally?

20 A. Okay. I don't know that I  
21 understand that question.

22 Q. Sure. Do you have any complaints  
23 against Zurich in this lawsuit on your own

1   behalf as opposed to as the administratrix of  
2   your husband's estate?

3           A.   No, sir.

4           Q.   If I asked this already, I  
5   apologize.  How long had your husband been  
6   working for Boan?

7           A.   He had been working for Boan -- I  
8   was pregnant with Matt -- twenty-two,  
9   twenty-three years, something like that.

10          Q.   What was his job or his position at  
11   the time of his accident?

12          A.   He was a foreman.  He had his own  
13   crew that he ran.

14          Q.   Did he start out as a foreman  
15   twenty-two years ago?

16          A.   No, sir.

17          Q.   What did he start out as?

18          A.   He worked at the shop and then  
19   eventually started working on jobs and worked  
20   his way up as a foreman.

21          Q.   How long had he been a foreman?

22          A.   I don't know exactly how many years  
23   but for many years.

1 Q. Ten or thereabouts?

2 A. Approximately.

3 Q. And I don't mean --

4 A. Yes, sir.

5 Q. -- to pin you down to a specific  
6 number.

7 A. Yes, sir.

8 Q. What did you understand Mr. Smith's  
9 duties to be as a foreman for Boan?

10 A. He made sure they had everything  
11 they needed to complete the job. He made sure  
12 that his crew members were where they were  
13 supposed to be and doing what they were  
14 supposed to be doing sometimes 24/7 during the  
15 job.

16 Q. Did he work as a foreman only with  
17 jobs away from the company's office or  
18 headquarters?

19 A. Yeah. He -- They're always away  
20 from the company office. Unless they were  
21 picking up supplies, they were not working at  
22 the office.

23 Q. As a foreman working on these jobs,

1 did that require him to be gone for extended  
2 periods frequently?

3 A. Yes, sir.

4 Q. You mentioned the truck that -- the  
5 Boan company owned truck that was assigned to  
6 your husband.

7 A. Yes, sir.

8 Q. It was typically this -- It was  
9 always the same truck --

10 A. Yes, sir.

11 Q. -- that he drove?

12 A. Um-hum (yes).

13 Q. What kind of truck was that?

14 A. I don't know that I remember. A  
15 Chevrolet, I believe. I know it was a white  
16 Chevrolet. It had the big body on the back  
17 with all the tools.

18 Q. Was it a pickup truck?

19 A. Yes. It had the big tool boxes all  
20 the way around the side, because he had to  
21 carry a lot of tools and he was in charge of  
22 those also.

23 Q. Did Mr. Smith typically drive that

1 truck to the job sites?

2 A. Yes.

3 Q. Where did the truck stay when he  
4 didn't have it at the job site?

5 A. At our home. He didn't turn it in  
6 on the weekends or anything.

7 Q. And I understand that the work  
8 schedule on these jobs could be fairly  
9 irregular; is that right?

10 A. Yes, sir.

11 Q. So it could easily be true that he  
12 wasn't home every weekend.

13 A. Yes, sir.

14 Q. But whenever he was home, he parked  
15 the truck at your house?

16 A. Yes, sir.

17 Q. Did he drive it any around, you  
18 know, town on the weekends or on the days that  
19 he was home?

20 A. Not much. Occasionally he would.  
21 He would have it washed and cleaned and oil  
22 changed and tires if he needed to do that.  
23 They had like a tab at the Andalusia Tire, and



1 he would make sure it was taken care of.

2 Q. And that was sort of maintenance  
3 that was paid for by the company?

4 A. Yes, sir.

5 Q. How about gas? How was that paid  
6 for?

7 A. By the company.

8 Q. He had a gas card?

9 A. He had a card -- credit card.

10 Q. Did you ever drive the Boan truck  
11 when it was home for the weekends?

12 A. I might have driven it to move it  
13 to mow under it.

14 Q. Understood. But not around town  
15 or --

16 A. No, sir.

17 Q. -- to school or anything like that?

18 A. No, sir.

19 Q. Prior to the week of his accident  
20 -- and we'll talk about that in a little bit  
21 -- had Mr. Smith ever driven his own personal  
22 car or truck to a Boan job site that you're  
23 aware of?

1           A.    On occasion.  If there was a  
2    doctor's appointment or a special occasion.  
3    Because all the tools was in his truck and he  
4    normally picked up several people and carried  
5    them also, they would have to have the truck  
6    and the tools there on the job.  So it  
7    happened occasionally.

8           Q.    You mean if there was a doctor's  
9    appointment -- You said if there was a  
10   doctor's appointment or special occasion.  Do  
11   you mean if Mr. Smith himself had to go to a  
12   doctor's appointment --

13          A.    Yes, sir.

14          Q.    -- and leave the job site?

15          A.    Yes, sir.

16          Q.    Okay.

17          A.    He would always show up later.  
18   I've taken him to work with broken arms and a  
19   broken leg and --

20          Q.    You mean he'd always show up to  
21   work even if he had a doctor's appointment?

22          A.    Even if I had to take him.

23          Q.    In any of those instances when you

1 recall that he drove his own truck to the job  
2 site for a reason such as you've described, do  
3 you know if Boan reimbursed Mr. Smith for the  
4 mileage or the gas that he used on those  
5 trips?

6 A. He would let him use the credit  
7 card to put the gas in the truck. Yes, sir.

8 Q. Do you know if he was reimbursed  
9 for mileage?

10 A. He got an expense check every week  
11 for being out of town, and so it didn't matter  
12 where -- you know, if he was on his truck.  
13 But as far as just specifically for his truck,  
14 no, sir.

15 Q. When you say "an expense check for  
16 being out of town", was that like a per diem  
17 for food and lodging?

18 A. Yes, sir. Well, for food. They  
19 paid for all his lodging.

20 Q. Okay. The company paid directly  
21 for the hotels.

22 A. Yes. Yes. That didn't come to us.  
23 Roger got a salary and then he got a check for

1 food.

2 Q. Okay. It's my understanding, Ms.  
3 Smith, that immediately prior to his accident,  
4 Mr. Smith was working on a job for Boan in  
5 Jacksonville, Florida; is that right?

6 A. Yes, sir.

7 Q. What kind of job was that, do you  
8 know?

9 A. I honestly don't know.

10 Q. How long had it been going on?

11 A. A long time.

12 Q. Five or six months sound about  
13 right?

14 A. Maybe longer than that.

15 Q. Was that a longer than normal  
16 period of time for a job to be going on that  
17 Mr. Smith would be working on?

18 A. Not necessarily longer than normal.  
19 He was always gone. And sometimes they would  
20 be short jobs, and sometimes they would be  
21 longer.

22 Q. Sure. But this doesn't stand out  
23 as the longest one --

1 A. As the longest one ever, no, sir.

2 Q. -- that you can remember or  
3 something like that?

4 A. No, sir.

5 Q. Prior to the week or the time  
6 shortly before the accident, prior to that  
7 trip, had Mr. Smith driven the Boan company  
8 truck to Jacksonville?

9 A. Yes, sir.

10 Q. Had he ever driven his own truck to  
11 Jacksonville before that week?

12 A. Before that week, I really don't  
13 remember.

14 Q. Ms. Smith, when was the last time  
15 that your husband was at home in Andalusia  
16 before he went to Jacksonville for the last  
17 time?

18 A. I don't remember the exact date.  
19 It was, I know, the first week in September.  
20 We were -- But I don't know what day of the  
21 week. Possibly Thursday, because we were  
22 going to Louisiana. My daughter-in-law was  
23 expecting twins. And while we were there on

1 Saturday, he got a call saying that he needed  
2 to come back to Jacksonville. And so he left.  
3 He and my daughter left, and then I stayed.  
4 We had taken different vehicles, because we  
5 knew that was a possibility.

6 Q. Yes, ma'am.

7 A. And so I stayed. My mother and I  
8 stayed.

9 Q. And your recollection -- And I'm  
10 not trying to get you specific on a day -- But  
11 about a week before the accident was when you  
12 all left Andalusia to go down to Louisiana?

13 A. Approximately a week, yes, sir.

14 Q. Okay. Where in Louisiana did you  
15 go?

16 A. Shreveport. Barksdale.

17 Q. Is that where your --

18 A. He was stationed.

19 Q. He's in the Air Force?

20 A. Yes, sir.

21 Q. And you said that a phone call came  
22 in while you were in Louisiana --

23 A. Um-hum (yes).

1 Q. -- on Saturday?

2 A. Um-hum (yes).

3 Q. Do you know who made the phone  
4 call?

5 A. I don't.

6 Q. Did you talk to anybody from --  
7 This was a phone call from Boan Contracting as  
8 you understand; right?

9 A. As I understand it, yes, sir. I  
10 didn't talk to them.

11 Q. You didn't talk to anybody on the  
12 phone?

13 A. Hu-huh (no).

14 Q. What do you recall Mr. Smith  
15 saying, if anything, had happened?

16 A. He just -- He had to go back and  
17 call him every day and let him know what was  
18 going on. And Barry had also told him, you  
19 know, that we'll fly you back to Louisiana if  
20 those twins start being born. So I mean --

21 Q. And by "Barry", you mean Barry  
22 Boan?

23 A. Barry Boan. Yeah. All the Boans

1     were always really good to us.

2             Q.     Was Barry Mr. Smith's boss or  
3     supervisor --

4             A.     On this job.

5             Q.     -- on this job?

6             A.     Um-hum (yes).

7             Q.     So your grandchildren hadn't been  
8     born yet when this call came in?

9             A.     Hu-huh (no).

10            Q.     I'm sorry. Can you answer out  
11     loud, if you can, for the court reporter?

12            A.     I'm sorry. No, sir. They had not  
13     been born.

14            Q.     And you said he left Louisiana with  
15     your daughter?

16            A.     Um-hum (yes).

17            Q.     Where was he taking her?

18            A.     She was coming back to Andalusia,  
19     and then he left from Andalusia going to  
20     Jacksonville.

21            Q.     Do you know when he arrived in  
22     Jacksonville?

23            A.     I really don't. I know it was



1 either late Saturday or early Sunday morning.  
2 Because he left after they got home. And I  
3 don't remember if he spent the night at home  
4 that Saturday night and left Sunday morning or  
5 not. No. He left Saturday. He left  
6 Saturday, because he came by to see Kelly.  
7 She had gotten a hair appointment and got her  
8 hair done, and he came by and told her I'm  
9 going.

10 Q. And you're talking about that all  
11 happened here in Andalusia?

12 A. On Saturday here in Andalusia.  
13 Yeah.

14 Q. Okay. Did you talk with Mr. Smith  
15 after he got to Jacksonville --

16 A. Yes, sir.

17 Q. -- to know that he had arrived?

18 A. Yes, sir.

19 Q. So you know he got there sometime  
20 by the end of that weekend.

21 A. Yes, sir.

22 Q. All right. He was in his own  
23 personal truck; is that right?

1 A. Um-hum (yes).

2 Q. What kind of truck was that?

3 A. It was a black and red Chevrolet  
4 pickup 1500. It was just a regular cab truck.

5 Q. At any time after he left Louisiana  
6 to go back, did he ever tell you the nature of  
7 the reason why he had been called back to  
8 Jacksonville?

9 A. No, sir. If he did -- My mind was  
10 on the twins. And he would talk about his  
11 jobs to me, but I didn't really understand  
12 what was going on, so I would listen.

13 Q. That's what I do with my wife when  
14 she talks to me about her job.

15 A. Well, that's what Roger did to me  
16 when I talked about my students too; my first  
17 graders. So --

18 Q. So he may have told you, but today  
19 with the time that's passed, you don't  
20 remember; is that right?

21 A. No, sir. I don't remember. No,  
22 sir. I just remember they were working long  
23 hours.

1 Q. Yes, ma'am. Do you know where Mr.  
2 Smith's Boan company truck was at that time?

3 A. It was at the job in Jacksonville.

4 Q. And how had it gotten there, if you  
5 know?

6 A. I believe as well as I can recall  
7 that because the tools had to be down there  
8 and some of the other men who lived around the  
9 area was also going to Jacksonville that  
10 usually rode with Roger, they came by and got  
11 the truck and took it down.

12 Q. And do you know when that happened?

13 A. I don't.

14 Q. We talked to Mr. Doug Boutwell  
15 earlier today --

16 A. Yes, sir.

17 Q. -- who I understand worked with Mr.  
18 Smith.

19 A. Yes, sir.

20 Q. And do you know when Mr. Boutwell  
21 or the rest of the crew went back to  
22 Jacksonville that week?

23 A. I really don't. I'm not even sure

1 if they all came home for the weekend. Roger  
2 might have caught a ride with a big truck or  
3 -- I really don't remember how he got home. I  
4 think his truck was in Jacksonville the whole  
5 time.

6 Q. Okay. So you're not sure then at  
7 this point whether the crew -- the Boan crew  
8 was -- had ever left Jacksonville.

9 A. I think they were -- I believe --  
10 Because if they hadn't been, he would have  
11 been on his truck, and it would have been home  
12 on Saturday if they had all left. And it  
13 wasn't. It's just one of those circumstances.

14 Q. Do you have any recollection or did  
15 you ever hear that there was any sort of  
16 mechanical problem with Mr. Smith's Boan  
17 company truck around that time that kept it  
18 from being driven?

19 A. No, sir. Not that I'm aware of.

20 Q. Do you recall if you ever talked  
21 with Mr. Smith about any possibility that he  
22 would take the Boan company truck to Louisiana  
23 on that trip?

1 A. No. He would not have done that.

2 Q. We know he didn't, of course.

3 A. He wouldn't have.

4 Q. Didn't even talk about it with you.

5 A. No. He didn't use the company

6 truck for his own truck.

7 Q. I want to ask you a few questions.

8 Well, that's not true. I don't want to. But

9 I need to ask you a few questions about the  
10 day of the accident, ma'am.

11 A. Yes, sir.

12 Q. That was on September 8th of 2005;

13 is that right?

14 A. Yes, sir.

15 Q. Do you know when Mr. Smith left

16 Jacksonville that day --

17 A. I don't.

18 Q. -- roughly?

19 A. No, sir. I didn't know he was

20 coming home that day.

21 Q. I'm sorry?

22 A. I did not know he was headed home

23 that day.

1 Q. You did not know he was headed home  
2 that day?

3 A. I did not know.

4 Q. Did you have a day when you  
5 expected him to come home?

6 A. Friday.

7 Q. On Friday?

8 A. Yes, sir.

9 Q. Do you know now why he came home on  
10 Thursday instead of Friday?

11 A. No, sir.

12 Q. Do you know whether or not the rest  
13 of the Boan crew left Jacksonville on  
14 Thursday?

15 A. I don't. I know that we were  
16 planning to go back to Louisiana, because at  
17 this point, you know, the doctors were saying,  
18 well, we are gonna let the twins be born. My  
19 daughter-in-law had been in the hospital for  
20 weeks and weeks.

21 Q. When were the twins born?

22 A. The 14th.

23 Q. Was everything all right?

1 A. Yes, sir

2 Q. But you hadn't talked to Mr. Smith  
3 and said come home early so we can go to  
4 Louisiana or anything of that nature, I take  
5 it.

6 A. Hu-huh (no).

7 Q. Is that a no?

8 A. No, sir. Sorry.

9 Q. I take it then that you didn't talk  
10 with Mr. Smith that day at all or you would  
11 have known he was coming home; is that right?

12 A. Yes, sir. I did not talk to him  
13 that day.

14 Q. So do you know if he had any other  
15 stops to make on his trip that day other than  
16 coming home?

17 A. He was just coming home.

18 Q. Now, the site where the accident  
19 took place, do you know if that was his -- on  
20 his normal route from Jacksonville to home?

21 A. Yes, sir, it was.

22 Q. Do you have any idea what happened  
23 to the Boan company truck that had been his

1 that week --

2 A. No, sir.

3 Q. -- if it ever got back from  
4 Jacksonville or anything of that nature?

5 A. No, sir.

6 Q. Okay. Ms. Smith, did you file the  
7 workers compensation claim arising out of this  
8 accident with your husband's employer? Do you  
9 recall?

10 A. I don't recall.

11 Q. Do you recall or do you know if  
12 you've received any sort of workers  
13 compensation payment or series of payments as  
14 a result of that accident?

15 A. Yes, sir. I do know.

16 Q. And did you have an attorney help  
17 you with that; with a claim for those workers  
18 compensation benefits that you remember?

19 A. Not that I remember. Can I ask  
20 you? You didn't help me with them?

21 MR. SLEDGE: Just a little bit.

22 A. Oh, okay.

23 Q. I'm not trying to --



1 A. That's okay.

2 Q. -- trick you or fool you or  
3 anything.

4 A. No. I don't believe you are. But  
5 I -- You know, there's just some things  
6 that --

7 Q. Sure. I understand, ma'am.

8 A. -- I don't remember.

9 Q. That's all right. Are you  
10 receiving periodic payments for the workers  
11 comp claim?

12 A. Yes, sir.

13 Q. And how much are you receiving on  
14 it every -- is it month?

15 A. Every week.

16 Q. Every week?

17 A. Five hundred dollars.

18 Q. Do you know how long those payments  
19 are scheduled to continue?

20 A. No, sir.

21 Q. Do you know if either Boan  
22 Contracting or Boan Contracting's workers  
23 compensation insurance company ever contested

1 or disputed a claim for benefits for Mr.  
2 Smith?

3 A. I'm not aware that they did.

4 Q. Did Mr. Smith carry personal  
5 automobile insurance at the time of his  
6 accident?

7 A. Yes, sir.

8 Q. All right. Was any claim for  
9 uninsured motorist benefits made under that  
10 policy?

11 A. We didn't have any uninsured  
12 motorist insurance on the black and red truck  
13 or my personal car.

14 Q. I'm sorry. Did you say on the  
15 truck or your personal car?

16 A. Or on my truck.

17 Q. Okay. So there was -- It's your  
18 understanding there was no uninsured motorist  
19 coverage on your personal automobile policy.

20 A. On the ones that we drove, no, sir.

21 Q. Okay. And leaving aside the Zurich  
22 policy that's at issue here. I'm not talking  
23 about that at all.

1           A.    Right.  On my truck that I drove  
2   and the truck that he was on, we didn't have  
3   uninsured on them.

4           Q.    Okay.  Did Mr. Boan have a life  
5   insurance policy in force at the time?

6           A.    Boan Contracting on Roger?

7           Q.    Did his company have one on Roger?

8           A.    No, sir.

9           Q.    Okay.  Did you or he have a  
10   personal life insurance policy?

11          A.    Yes, sir.

12          Q.    Did those pay off?

13          A.    Yes, sir.

14          Q.    What was the benefit that was paid?

15          A.    A hundred and fifty thousand.

16          Q.    Was that one policy or more than  
17   one?

18          A.    One policy.

19          Q.    And did you either on your own  
20   behalf or on behalf of Mr. Smith's estate file  
21   a claim against the other driver in the  
22   accident?

23          A.    No, sir.  Yes.  I don't

1 personally --

2 Q. Did you ever file a lawsuit  
3 against, I think her name was, Carter? The  
4 driver in the other lawsuit -- I mean, the  
5 accident, do you know if you ever filed a  
6 lawsuit against that driver?

7 A. I don't remember.

8 Q. Did you receive --

9 A. I'm not using the right words.

10 Q. That's all right.

11 A. I'm sorry.

12 Q. If you don't understand the  
13 question or not sure, then that's what I need  
14 you to tell me. And I appreciate it.

15 A. Okay.

16 Q. Have you received any money or has  
17 the estate received any money from the other  
18 driver or from somebody on her behalf?

19 A. No, sir.

20 Q. Do you know if the other driver had  
21 any insurance -- any automobile insurance?

22 A. I believe she did.

23 Q. And how much?

1 A. A minimum amount.

2 Q. Do you have any idea of a figure?

3 A. I'm sorry. I don't.

4 Q. Sure. As you understand it now,  
5 you have not received any payment under that  
6 insurance policy from -- arising out of your  
7 husband's accident?

8 A. I haven't received any money.

9 MR. SLEDGE: Can we go off the  
10 record?

11 Q. Sure.

12

13 (Whereupon, an off-the-record discussion  
14 was had.)

15

16 Q. Ms. Smith, have you had any  
17 communication, whether it's on the phone or  
18 written, yourself with anyone from Zurich  
19 about the claim for uninsured motorist  
20 benefits that you've made?

21 A. Not on the phone, no, sir. The  
22 only thing that I received was that subpoena.

23 Q. Is that the notice for your

1 deposition here today you're talking about?

2 MR. SLEDGE: I think she's talking  
3 about the summons for the original complaint.

4 Q. Oh, okay.

5 A. The summons. That's the only --

6 Q. The summons for the complaint in  
7 this declaratory judgement action that we're  
8 here on today.

9 A. Yes, sir.

10 Q. Okay. You haven't received any or  
11 sent any letters or faxes or e-mails to Zurich  
12 about this claim; is that right?

13 A. No, sir, I haven't.

14 Q. And you haven't received any from  
15 them.

16 A. No, sir, I haven't.

17 Q. Okay. How about with anyone with  
18 Boan Contracting? Have you spoken for written  
19 with anyone with the company about the claim  
20 that's been made for benefits under the  
21 company's auto policy?

22 A. No, sir.

23 Q. If y'all will bear with me a

1 moment, we're probably about done.

2 The week when he took his own personal  
3 truck to Jacksonville, do you have any  
4 knowledge as to whether he used the company  
5 gas card to buy gas on that trip?

6 A. I don't have any knowledge.

7 Q. And did the company reimburse him  
8 or you for his use of that truck in any way  
9 that you remember that week?

10 A. No, sir. And I don't have any  
11 knowledge of it, but I do know that his credit  
12 card and Barry would have wanted him to fill  
13 up the truck as far as getting it to work and  
14 back.

15 Q. That's what you understand would  
16 normally have been the procedure.

17 A. Yes. But I do not know that. But  
18 that would have been normal.

19 Q. Sure. I understand. Thank you.  
20 Those are all the questions I have, Ms. Smith.  
21 I appreciate it very much.

22

23 FURTHER DEPONENT SAITH NOT

1 C E R T I F I C A T E

2

3 STATE OF ALABAMA)

4 COUNTY OF BUTLER)

5

6 I do hereby certify that the above and  
7 foregoing transcript of proceedings in the  
8 matter aforementioned was taken down by me in  
9 machine shorthand, and the questions and  
10 answers thereto reduced to writing under my  
11 personal supervision, and that the foregoing  
12 represents a true and correct transcript of  
13 the proceedings given by said witness upon  
14 said hearing.

15

16 I further certify that I am neither of  
17 counsel nor related to the parties to the  
18 action, nor am I in any wise interested in the  
19 result of said cause.

20

21

-----

22

Sue Anne Casey

23

Court Reporter



# **EXHIBIT 3**

1 IN THE UNITED STATES DISTRICT COURT FOR  
2 THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION  
4  
5

6 CASE NUMBER: 2:07-CV-216-MEF  
7

8 ZURICH AMERICAN INSURANCE COMPANY,  
9 Plaintiff,

10 vs.

11 JUNIORETTE GRIFFIN SMITH, as Administratrix of  
12 the Estate of Dale Smith, deceased,  
13 Defendant.  
14

15 \* \* \* \* \*  
16

17 The deposition of Doug Boutwell, taken  
18 pursuant to Alabama Rules of Civil Procedure  
19 before Sue Anne Casey, Court Reporter and  
20 Notary Public, State at Large, at The Comfort  
21 Inn, Saraland, Alabama on the 5th day of  
22 March, 2008 commencing at approximately 9:00  
23 a.m.

1                   S T I P U L A T I O N

2

3                   IT IS STIPULATED by and between  
4   Counsel for the parties that this deposition  
5   be taken at this time by Sue Anne Casey, Court  
6   Reporter and Notary Public, State at Large,  
7   who is to act as commissioner without formal  
8   issuance of commission to her; that said  
9   deposition be taken down stenographically,  
10  transcribed and certified by the commissioner.

11

12                  Except for objections as to the form  
13   of the questions, no objections need be made  
14   at the time of the taking of the deposition by  
15   either party, but objections may be interposed  
16   by either party at the time the deposition is  
17   read into evidence, which shall be ruled upon  
18   by the Court on the trial of the cause upon  
19   the grounds of objection, then and there  
20   assigned.

21

22                  The reading and signing of the  
23   deposition is waived.

1                   A P P E A R A N C E S

2

3

4

5   PLAINTIFF:

6   By J. David Moore

7   WALSTON, WELLS & BIRCHALL, LLP

8   1819 Fifth Avenue North

9   Suite 1100

10   Birmingham, AL 35203

11

12

13

14

15   DEFENDANT:

16   By Christopher M. Sledge

17   WOODARD, PATEL & SLEDGE

18   1213 East Three Notch Street

19   Andalusia, AL 36420

20

21

22

23

1 I N D E X

2

3

4

5 EXAMINATION BY: PAGE NO:

6 Mr. Sledge 5, 31

7 Mr. Moore 23, 36

8

9

10

11

12 \* \* \* \* \*

13

14

15

16

17 E X H I B I T S

18

19

20 (Whereupon, no exhibits were marked.)

21

22

23

1 DOUG BOUTWELL

2 being first duly sworn, was examined

3 and testified as follows:

4

5

6 THE REPORTER: Usual stipulations?

7 MR. MOORE: That's fine.

8

9 EXAMINATION BY MR. SLEDGE:

10 Q. Could you please state your full  
11 name?

12 A. Douglas Winton Boutwell.

13 Q. Mr. Boutwell, have you ever done a  
14 deposition before?

15 A. No, sir.

16 Q. All right. Let me give you a  
17 little bit of what's going on. I'm gonna ask  
18 you some questions under oath. If I ask you  
19 anything that you don't understand, just tell  
20 me, and I'll try to rephrase it for you. If  
21 you need a break, just tell me, and we'll take  
22 a break. Again, if there's any questions that  
23 ask you that you don't understand, just tell

1 me and I'll rephrase it and we'll try to go  
2 back over it and see if I can straighten it  
3 out for you.

4 A. Okay.

5 Q. Have you got a nickname or anything  
6 that you go by?

7 A. They just call me Doug.

8 Q. And what's your date of birth?

9 A. 3/7/75.

10 Q. Okay. And where are you employed?

11 A. Boan Contracting.

12 Q. And how long have you been employed  
13 with Boan?

14 A. Since 2000.

15 Q. And what are your duties?

16 A. Operator.

17 Q. And what does that do as an  
18 operator?

19 A. Just a trackhoe operator --  
20 equipment operator.

21 Q. Have you been an operator since  
22 2000?

23 A. Yes, sir.

1 Q. And where do you work out of?

2 A. Greenville.

3 Q. I understand Boan has got a couple  
4 of offices in different places.

5 A. Sure.

6 Q. But you work out of the Greenville  
7 office mostly?

8 A. Yes, sir.

9 Q. Do you work in different locations  
10 throughout the state or --

11 A. Yeah. We work mostly in Alabama,  
12 but we do do some work in Mississippi.

13 Q. What exactly does Boan do?

14 A. Pipeline.

15 Q. Gas pipeline or --

16 A. Do some of all of it, but mostly  
17 gas.

18 Q. Okay. Let me ask you do you know  
19 -- Did you know Roger Smith?

20 A. Yes, sir.

21 Q. Okay. And how did you know Roger?

22 A. He was my foreman.

23 Q. Okay. How long was he your



1 foreman?

2 A. Well, it was in and out at times  
3 he was my foreman. At times, I had other  
4 foremen. As an operator, we moved around, you  
5 know, from foreman to foreman.

6 Q. I guess a foreman would be  
7 responsible for -- Tell me exactly what a  
8 foreman would do.

9 A. He's the one that answers to the  
10 one -- The guy we work for. He's the one that  
11 tells us what to do every day.

12 Q. Okay. So did each foreman have its  
13 own crew?

14 A. Yes, sir. Some is in and out, you  
15 know, just -- You know, if somebody is out,  
16 you know, we may go work for somebody else,  
17 you know.

18 Q. Okay. How many --

19 A. We're not assigned an exact  
20 foreman.

21 Q. How many foremen -- Excuse me. How  
22 many crew members did Roger have that worked  
23 with you?

1 A. It varies.

2 Q. Do you recall exactly how long you  
3 worked with Roger?

4 A. Well, I worked with him since 2000,  
5 you know --

6 Q. Okay.

7 A. -- to 2005, which was his death.

8 Q. So you were working with him back  
9 on September 8, 2005?

10 A. Yes, sir.

11 Q. Okay. Do you recall where y'all  
12 were working at?

13 A. Jacksonville.

14 Q. And what were y'all doing in  
15 Jacksonville?

16 A. Laying a waste waterline.

17 Q. And how long had y'all been in  
18 Jacksonville?

19 A. Approximately five to six months.

20 Q. Okay. Were y'all staying down  
21 there or did you drive back and forth every  
22 day?

23 A. We stayed.

1 Q. When would you go down to begin the  
2 week?

3 A. Primary mostly on Sundays. You  
4 know, we leave Sunday afternoon and be at work  
5 on Monday morning.

6 Q. Okay. And how long would y'all  
7 stay?

8 A. It just depended on the rain, you  
9 know, if it was raining. Sometimes two weeks.

10 Q. So you would stay two weeks at a  
11 time and then come back home?

12 A. Yes, sir. And the weather, you  
13 know, permitting. Sometimes the weather  
14 changed.

15 Q. Sure. Where were you living back  
16 in 2005?

17 A. Flomaton.

18 Q. Do you know where Roger lived?

19 A. Andalusia.

20 Q. How were y'all getting down to  
21 Jacksonville during that period?

22 A. Me and him rode together.

23 Q. And whose vehicle did you take?

11

1 A. The company truck.

2 Q. Who was responsible for that  
3 company truck?

4 A. Well, we both had a truck. And  
5 sometimes we drove his, and sometimes we drove  
6 mine. But, you know, we usually rode  
7 together.

8 Q. Now, it's a company truck that is  
9 provided by Boan?

10 A. Yes.

11 Q. What kind of truck was it?

12 A. His was a 250 HD Chevrolet. Mine  
13 was a 450 Ford.

14 Q. Okay. So back in 2005, each one of  
15 y'all had your own company truck?

16 A. Yes.

17 Q. Do all employees of Boan have their  
18 own company truck?

19 A. No, sir.

20 Q. Which employees have them?

21 A. Well, he just assigned some trucks  
22 -- All foremen have got them and some  
23 operators.

1 Q. And you are one of the operators  
2 that had one.

3 A. I was one of the operators that had  
4 a truck.

5 Q. And you're for certain you had your  
6 own personal truck back in 2005?

7 A. Yeah. I had mine.

8 Q. Your own company truck. Excuse me.

9 A. Yeah.

10 Q. So you would only take one company  
11 truck down to Jacksonville. You would either  
12 ride with Roger or Roger would ride with you?

13 A. Yes. Well, we carried -- Initially  
14 we carried both of them and the, you know, as  
15 the job went on, we drove just one back and  
16 left one on the security yard down there. Our  
17 yard was, you know, security, and we only  
18 drove one home. I would ride with him home or  
19 he would ride with me home.

20 Q. But I understand that no matter  
21 what, when you were on the job, you both had  
22 your company trucks down there.

23 A. Yes, sir.

1           Q.    Okay.  But you would just drive one  
2   back and forth and leave the other one down  
3   there.

4           A.    Yes, sir.

5           Q.    Now, I want to take you back to  
6   September 8, 2005.  And that's the day Roger  
7   was killed in the car accident.

8                   Roger was on his personal vehicle.  Do  
9   you know the circumstances surrounding Roger  
10  being on his personal vehicle?

11          A.    Yes, sir.

12          Q.    Okay.  If you don't mind, just kind  
13  of explain that.

14          A.    He was on his personal truck.  He  
15  drove it down the week before when we went  
16  back because his son was gonna have babies --  
17  have a youngin.  So he drove his truck so if  
18  she had it -- you know, the babies, he could  
19  come home.

20          Q.    Do you understand that he was on  
21  some kind of vacation -- I guess, he was  
22  taking vacation time at that period?

23          A.    He was going to, you know.  When

1 she had the babies, he was gonna take vacation  
2 time.

3 Q. Okay. Is it your understanding  
4 that he was in Louisiana?

5 A. I was thinking -- I told -- I  
6 thought he was in Texas. It might have been  
7 Louisiana. I was under the impression he was  
8 in Texas, you know, with his son. He was in  
9 the Air Force, and he moved, you know. But I  
10 thought he was in Texas.

11 Q. Okay. Why did he take his personal  
12 vehicle down to Jacksonville?

13 A. So he could come home. His, you  
14 know, company truck has got tools that we use,  
15 and he didn't really know how many days he was  
16 gonna be off. So he drove his personal truck  
17 so, you know, we'd have tools.

18 Q. Okay. Let me just back up a little  
19 bit. Before September 8th and before he went  
20 to Louisiana with his -- waiting for his  
21 grandchild to be born, how did he get back to  
22 his home? Did he take his -- Did he ride with  
23 you back?

1           A.    Yeah.  I would come by, you know,  
2   and drop him off, and then, you know, I would  
3   go on home.  I live an hour, you know, south.

4           Q.    Prior to the accident, when did he  
5   come back to Jacksonville?  Do you recall?

6           A.    It was probably the week before.  
7   We come back on that Sunday afternoon.  He did  
8   and I did too.  And we'd work a week.  We was  
9   working on our second week when we come home.  
10   That was on a Thursday.

11          Q.    Okay.  Let me ask you if you recall  
12   it this way.  Do you recall him being in  
13   Louisiana and Boan Contracting contacting him  
14   and say, hey, we need you in Jacksonville now,  
15   that there's some kind of emergency or  
16   something along those lines?  Do you remember  
17   anything to that affect?

18          A.    No.  He hadn't went yet.  You know,  
19   at that time, he was, you know, just waiting.  
20   You know, he didn't want to take his time  
21   before she had the babies, because he wanted  
22   to be with his son, you know, after they had  
23   the babies.



1           Q.    Okay.  You say this accident -- I  
2    think the accident happened on a Thursday  
3    night.  Do you recall when he came to work  
4    that week prior?

5           A.    Not exact day.

6           Q.    Could it have been Saturday?

7           A.    I'm really uncertain, it's been so  
8    long now, you know, when he come back, you  
9    know, or me either.

10          Q.    Does Boan keep up with your time  
11   when you're working and when you're not  
12   working?

13          A.    Well, yeah.  I mean, they've got --

14          Q.    Records for that?

15          A.    I would assume they do.  They know  
16   when they've got payroll.

17          Q.    So there's possibly some records  
18   showing which day y'all actually went to work  
19   that week?

20          A.    I mean, it's been two and a half  
21   years.  I mean, at the time they would have.  
22   I don't know how long they keep the records.  
23   Yeah.  They would have when I worked and when

1 he worked too.

2 Q. Would it be unusual for Boan to  
3 call y'all in early to go and work on some  
4 emergency situations, say, you had a gas line  
5 leak or something like that and call you in on  
6 a Friday night or Saturday?

7 A. Well, hardly ever. But he can, you  
8 know.

9 Q. Okay. Do you recall whether  
10 Roger's truck was ever in the shop during that  
11 week --

12 A. No, sir.

13 Q. -- getting repairs done to it?

14 A. No, sir.

15 MR. MOORE: Which truck are you  
16 talking about?

17 Q. I'm sorry. His company truck.

18 A. No, sir.

19 Q. No extra equipment added to it or  
20 anything?

21 A. No, sir.

22 Q. How often did Roger drive his own  
23 personal vehicle back and forth to work?

1           A.    That was the only time he had  
2    driven it.

3           Q.    The only time that --

4           A.    During that project.

5           Q.    Yes, sir.

6           A.    He worked with Boan before I  
7    started, so, you know, I'm really unsure about  
8    that. But that particular job, that was the  
9    first time.

10          Q.    During the time that you worked  
11   with Boan, do you ever recall Roger driving  
12   his own personal vehicle?

13          A.    No, sir.

14          Q.    On September 8th, were you heading  
15   back home also?

16          A.    Yes, sir.

17          Q.    Did you go in a different  
18   direction?

19          A.    Yeah. I go on -- I live further  
20   down. I went on down 10 and turned off 10 and  
21   I kept going.

22          Q.    Let me ask you -- And we've already  
23   talked about Boan providing vehicles --

1 company vehicles. When you travel to and from  
2 work, are you considered on the clock  
3 basically?

4 MR. MOORE: Object to the form.  
5 You can go ahead and answer, if you know.

6 A. No. We ain't on the clock until we  
7 get to work.

8 Q. You're not on the clock until you  
9 get to work.

10 A. (Witness nods head yes.)

11 Q. Did they provide you gas in the  
12 company truck?

13 A. Yes, sir. We've got gas cards.

14 Q. As far as you can remember, there  
15 was no emergency or anything along those lines  
16 a week prior at work?

17 A. Not on our project.

18 Q. Do you remember when Hurricane  
19 Katrina came through?

20 A. I don't remember the date, but yes,  
21 I remember it.

22 Q. Was it before or after Roger's  
23 accident?

1           A.    It was before.  I'm not quite sure.  
2   We had two or three tropical storms that year,  
3   but I think that one was actually before.

4           Q.    Did Katrina affect your work in  
5   Jacksonville?

6           A.    Yeah.  We was off some.  I don't  
7   remember any of the days or how many days.  We  
8   was off several days on account of rain.

9           Q.    Did that put y'all behind or  
10   anything?  Anything that you can recall?

11          A.    No.  I don't recall.

12          Q.    Was Roger's truck at the work site  
13   the day of the accident?  I'm sorry.  Roger's  
14   company truck --

15          A.    Yes, sir, it was.

16          Q.    -- was left at the work site in  
17   Jacksonville.

18                Other than him having his personal  
19   vehicle down in Jacksonville, was there any  
20   other reason why he didn't take the work truck  
21   back to Andalusia?

22          A.    Well, as a foreman, he has our  
23   equipment we use and tools.  And, you know, I

1     assume he elected to drive his so we would  
2     have equipment to work with.

3           Q.     So tell me a little bit more about  
4     that.  What tools does he have on his truck  
5     that aren't on, say, your truck.

6           A.     Well, there would just be wrenches  
7     and sockets and shovels and just a lot of  
8     miscellaneous stuff.

9           Q.     So there's equipment on his truck  
10    that y'all would need for day-to-day work.

11          A.     Yeah.  Day-to-day work.

12          Q.     So if he was going on vacation,  
13    it's required that his truck be at the work  
14    site at all times.

15          A.     Yes, sir.

16          Q.     Does Boan require that if you go on  
17    vacation that you leave your particular work  
18    truck at the site or what's their policy  
19    concerning that?

20          A.     I never asked.  Unsure.

21          Q.     But on this particular occasion or  
22    at least before September 8th, you know  
23    definitely that Roger left his truck at the

1 site because there was tools that were  
2 required for the job?

3 A. Yes. He was going on a -- you  
4 know, gonna take vacation days. So --

5 Q. Do you know how long Roger worked  
6 for Boan?

7 A. Not sure.

8 Q. But he was a foreman the entire  
9 time that you worked with them?

10 A. Yes.

11 Q. Who was Roger's boss?

12 A. It would be Barry Boan or -- Boan  
13 Contracting. It's two or three of the owners.

14 Q. David Scott, what is his position  
15 with Boan?

16 A. All I know is he works in the  
17 office. You know, I don't know, you know,  
18 just what all he handles, but office, you  
19 know.

20 Q. That's it. Thank you, sir.

21 MR. MOORE: I may have one or two  
22 questions, Mr. Boutwell. Why don't we take  
23 just a quick break.

1           (Whereupon, a break was taken.)

2

3       EXAMINATION BY MR. MOORE:

4           Q.    Mr. Boutwell, I'm David Moore, and  
5       we've met before. I represent Zurich  
6       Insurance in this matter. I just have a few  
7       questions for you. I hope we won't take up  
8       too much more of your time. I wanted to ask  
9       you a little bit more about when you and Mr.  
10      Smith returned from Alabama to the  
11      Jacksonville job site prior to the accident on  
12      September 8th of -- Was it 2005?

13           A.   Yes, sir.

14           Q.   We know that Mr. Smith drove his  
15      personal truck. You've talked about that; is  
16      that right?

17           A.   Yes, sir.

18           Q.   Which truck did you drive back to  
19      Jacksonville before the accident?

20           A.   I drove his truck -- his work  
21      truck.

22           Q.   His company truck?

23           A.   We had drove his home that



1 particular week.

2 Q. Where was your company truck?

3 A. It was on the job site.

4 Q. In Florida.

5 A. In Jacksonville.

6 Q. So when you were asked earlier  
7 about whether there was any -- whether Mr.  
8 Smith's company truck was in the shop or  
9 anything like that -- And I may be misstating  
10 exactly how that question was phrased -- you  
11 know that it was in working order because you  
12 had driven it to Florida just a few days  
13 before; right?

14 A. Yes, sir.

15 Q. Turning to the reasons why Mr.  
16 Smith drove his personal truck that week  
17 instead of a company truck, tell me again what  
18 you understood about his grandchildren being  
19 born or about to be born. How did you know  
20 that that was the case?

21 A. Well, me and him talked, you know.

22 Q. You and Mr. Smith?

23 A. Yes, sir. Me and Mr. Smith talked.

1 And as a friend and as a bossman, you know, he  
2 let us know where he would be and what he was  
3 gonna do, you know.

4 Q. Did he ever in fact go to -- Do you  
5 know if it was Texas or Louisiana where these  
6 grandchildren were coming?

7 A. I'm really unsure. I thought they  
8 was in Texas. It's been so long now, I'm  
9 really unsure.

10 Q. It might have been Louisiana, might  
11 have been Texas?

12 A. Sure.

13 Q. You know it wasn't Alabama though.

14 A. No. It wasn't Alabama.

15 Q. To your knowledge, did Mr. Smith  
16 ever go to Texas or Louisiana, whichever it  
17 was, to see his son and daughter-in-law prior  
18 to --

19 A. Yeah. He had been to see them  
20 prior. I don't know, you know, the weeks or,  
21 you know, days. But he had been prior to the  
22 accident.

23 Q. Did you and Mr. Smith drive

1 together to Jacksonville the week before the  
2 accident?

3 A. I mean, he was in his truck, and I  
4 was in mine.

5 Q. Right. No. That's a good point.  
6 Thank you.

7 As I understand it, you and he  
8 essentially followed each other home from  
9 Jacksonville to Alabama on the day of the  
10 accident in different trucks; right?

11 A. Yes, sir.

12 Q. Did you do that same thing going to  
13 Jacksonville prior to the accident?

14 A. No. We wasn't together.

15 Q. Do you know where he drove to  
16 Jacksonville from?

17 A. From his home.

18 Q. Okay. And how do you know that?

19 A. Because I mean, we talked. We  
20 talked on the radio all the way. We just  
21 wasn't together.

22 Q. Okay. So he told you on the way to  
23 Jacksonville over your phone or your radio

1 when you talked with him.

2 A. (Witness nods head yes.)

3 Q. Now, you talked about Mr. Smith  
4 taking vacation in connection with his  
5 grandkids coming. Did Mr. Smith ever actually  
6 take vacation days that you know of in  
7 connection with those grandkids?

8 A. I'm really unsure. He had been to  
9 see them, but I don't know if he had taken  
10 vacation days or --

11 Q. Between the time that you and he  
12 drove to Jacksonville the last time prior to  
13 the accident and coming home from Jacksonville  
14 on the day of the accident, did Mr. Smith  
15 leave the job site to go see those grandkids?

16 A. No, sir. He didn't leave the job  
17 site.

18 Q. He was there the whole time?

19 A. Yes, sir.

20 Q. And was this about a week or two  
21 weeks?

22 A. I'm really -- It was either a week  
23 or two weeks. No longer.

1 Q. Okay. On September 8th when you  
2 and he returned from Jacksonville, did the  
3 whole Boan crew leave on that day?

4 A. Yes, sir.

5 Q. What was the reason for leaving the  
6 project on that Thursday?

7 A. We had, you know, had worked a few  
8 days and it was some rain coming, so we  
9 knocked off where we'd have some time off.

10 Q. This wasn't vacation time though.

11 A. No, sir. It was just strictly, you  
12 know, kind of like a weekend thing, you know.

13 Q. And when were you scheduled to  
14 return to Jacksonville?

15 A. On Sunday. You know, go to work  
16 and Monday morning, so we would have went down  
17 on Sunday.

18 Q. Okay. And was that for the whole  
19 crew?

20 A. Well, the time to go back, you  
21 know --

22 Q. It was starting on Monday morning.

23 A. Yeah. We had to be at work at 6:30

1 on Monday. Go back whenever.

2 Q. Okay. Have you ever driven your  
3 personal truck to a job site for Boan instead  
4 of a company truck?

5 A. Yes, sir.

6 Q. When did you do that?

7 A. When I was first hired, I drove my  
8 personal truck.

9 Q. When you drove your personal truck,  
10 did Boan ever pay you mileage for using your  
11 truck?

12 A. No. You know, I had driven it to  
13 the job site, you know, before I was -- You  
14 know, I was at work at 6:30. I didn't drive  
15 it after the 6:30.

16 Q. You didn't drive it on the job.

17 A. I just drove it to the job.

18 Q. And Boan didn't pay you to do that?

19 A. No, sir.

20 Q. Do you know if Boan has any policy  
21 that calls for it to pay mileage for its  
22 employees who drive their personal vehicles?

23 A. I'm not sure.

1 Q. On the day of the accident, you and  
2 Mr. Smith essentially followed one another  
3 back from Florida; right?

4 A. Yes, sir.

5 Q. Did you talk with him on the radio  
6 during that trip?

7 A. Yes, sir.

8 Q. Did he say anything to you that you  
9 remember that day about where he was going?

10 A. Well, he was going home.

11 Q. Did he say anything about going  
12 anywhere else before he got home?

13 A. No, sir.

14 Q. When did you learn that Mr. Smith  
15 would be driving his own truck to Florida and  
16 not riding with you that week?

17 A. The day or day before -- day of,  
18 you know, going back, we talked.

19 Q. And he talked to you about that?

20 A. Yes, sir. He told me, you know, I  
21 didn't have to come get him, that he was gonna  
22 drive his personal truck.

23 Q. And during that conversation, do

1 you recall if he said why he was gonna take  
2 his personal truck?

3 A. Yeah. Because he could come home  
4 if he needed to.

5 Q. But in the end, he didn't need to.

6 A. In the end, he didn't need to.

7 Q. That's all I have, Mr. Boutwell.

8 Thank you.

9

10 EXAMINATION BY MR. SLEDGE:

11 Q. I just have a couple of follow-up.  
12 I think you told me earlier that you drove his  
13 truck to Jacksonville. I'm talking about  
14 Roger's company truck.

15 A. Yes, sir.

16 Q. You drove his company truck to  
17 Jacksonville.

18 A. (Witness nods head yes.)

19 Q. Where did you pick his truck up at?

20 A. I had driven -- When we drive home  
21 the week prior to that, we rode home together.  
22 I dropped him off at his home, you know, and I  
23 drove his truck on to my house.



1 MR. MOORE: His company truck.

2 A. His company truck.

3 Q. So let me make sure I understand.

4 The week before, he dropped you off or you  
5 dropped him off and took his company truck,  
6 and you took it home with you for that  
7 weekend.

8 A. Yes, sir.

9 Q. Okay. So we're talking about on a  
10 Friday or Thursday or Friday.

11 A. Um-hum (yes).

12 Q. You left out going back to  
13 Jacksonville that Sunday.

14 A. Yes, sir.

15 Q. You took his truck.

16 A. Yes, sir.

17 Q. Okay. Roger didn't go with you at  
18 that point.

19 A. No, sir.

20 Q. Was he off that entire week? Do  
21 you recall?

22 A. Prior to going back?

23 Q. Yes, sir. Prior to him coming down

1 to Jacksonville on his personal truck.

2 A. No. We went back, you know -- I  
3 mean, he just drove his personal truck, and I  
4 drove his company truck back.

5 Q. I guess my question is why didn't  
6 he just meet up with you and ride down with  
7 you like you've done every time before that.

8 A. Because he wanted to come home if  
9 need be. If she had the babies, he was coming  
10 home, you know. And he didn't want to drive  
11 his truck -- I mean, his company truck and,  
12 you know, not have a ride home.

13 Q. Ms. Smith kind of remembers this a  
14 little different. And I'm gonna explain to  
15 you what she remembers and see if you dispute  
16 any of this.

17 She claims and will testify later that  
18 they were in Louisiana; her, Roger, and Kellye  
19 Wayne. Roger gets a phone call from Boan  
20 saying, hey, you need to come back to work,  
21 we've got some kind of emergency or something  
22 like that. And he leaves out Friday night  
23 with Kellye Wayne, drives to Andalusia on his

1   personal truck, drops Kellye Wayne off, and  
2   then turns around Saturday morning and heads  
3   to Jacksonville. And that's the reason why he  
4   took his personal vehicle down was because he  
5   gets this phone call from Boan.

6           Do you have any reason to dispute  
7   something like that if they remember it that  
8   way?

9           A.   I mean, I don't -- You know, I know  
10   he was in -- you know, he had been to see them  
11   and she didn't -- You know, they thought they  
12   was gonna have the babies, so he had went out  
13   there and she didn't have the babies. So he  
14   had come back to work until, you know, time,  
15   you know, where he wouldn't be off so long.

16          Q.   Yes, sir. And I know it's been  
17   almost two years back. Do you remember if he  
18   came to work on a Saturday?

19          A.   I'm unsure.

20          Q.   Now, I think you testified earlier  
21   that y'all usually stay down there for like a  
22   two-week period.

23          A.   Yes, sir.

1 Q. Were you doing that along about  
2 September of 2005? Were y'all staying down  
3 for a two-week period?

4 A. We didn't have a set schedule. We  
5 worked with the weather.

6 Q. Okay.

7 A. If it was a storm coming in, we'd  
8 come home. If it was good weather, we worked.

9 Q. Okay. So you think it would be  
10 highly unusual if Boan called him and said,  
11 hey, we need you to be down here in  
12 Jacksonville?

13 A. I mean, you know, as far as  
14 emergency, probably no. But, you know, just  
15 to work, you know, we don't get off much. You  
16 know, we work.

17 Q. Do you recall if the hurricane had  
18 any affect on your work?

19 A. At this time, I don't remember.

20 Q. Yes, sir. But you know that you  
21 had Roger's truck at the job site.

22 A. Yes, sir.

23 Q. Roger's work truck at the job site.

1 I'll get it right.

2 A. Yes. His truck was at the job  
3 site.

4 Q. And he drove his truck down -- his  
5 personal truck down to the work site.

6 A. Yes, sir.

7 Q. Okay. Could it have been that you  
8 were already at the work site when he came  
9 down on his personal truck?

10 A. At this point I'm, you know -- I  
11 don't recall now.

12 Q. Okay.

13 A. Because I don't remember when he  
14 was off.

15 Q. Yes, sir. And I understand  
16 completely, because it's been several years  
17 back.

18 Okay. Thank you, sir.

19

20 EXAMINATION BY MR. MOORE:

21 Q. Mr. Boutwell, do you remember any  
22 emergency on the Jacksonville job site in the  
23 week or so prior to Mr. Smith's accident?

1           A.    No emergencies.

2           Q.    And I thought I understood you  
3   earlier to say that you recalled Mr. Smith  
4   talking to you on the phone the day before or  
5   the day that you went back to Jacksonville the  
6   week before the accident and telling you about  
7   his grandkids coming and that's why he was  
8   gonna take his personal truck. Do you recall?  
9   Am I remembering what you said right?

10          A.    Yeah. You know, it's been two  
11   years, but yeah.

12          Q.    Sure. Of course. And we all  
13   understand that it's been a long time.

14          A.    We talked on the phone that, you  
15   know, that's why he was driving his personal  
16   truck back.

17          Q.    But as you sit here now, you don't  
18   recall him coming from Louisiana or Alabama to  
19   deal with some emergency situation in the week  
20   or so prior to his accident.

21          A.    I don't recall that.

22          Q.    That's it.

23               MR. SLEDGE: Thank you, sir.

1 MR. MOORE: Thank you very much.

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9 FURTHER DEPONENT SAITH NOT

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1 C E R T I F I C A T E

2

3 STATE OF ALABAMA)

4 COUNTY OF BUTLER)

5

6 I do hereby certify that the above and  
7 foregoing transcript of proceedings in the  
8 matter aforementioned was taken down by me in  
9 machine shorthand, and the questions and  
10 answers thereto reduced to writing under my  
11 personal supervision, and that the foregoing  
12 represents a true and correct transcript of  
13 the proceedings given by said witness upon  
14 said hearing.

15

16 I further certify that I am neither of  
17 counsel nor related to the parties to the  
18 action, nor am I in any wise interested in the  
19 result of said cause.

20

21

-----

22

Sue Anne Casey

23

Court Reporter



# **EXHIBIT 4**

1

1 IN THE UNITED STATES DISTRICT COURT FOR  
2 THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION  
4  
5

6 CASE NUMBER: 2:07-CV-216-MEF  
7

8 ZURICH AMERICAN INSURANCE COMPANY,  
9 Plaintiff,

10 vs.

11 JUNIORETTE GRIFFIN SMITH, as Administratrix of  
12 the Estate of Dale Smith, deceased,  
13 Defendant.  
14

15 \* \* \* \* \*  
16

17 The deposition of David Scott, taken  
18 pursuant to Alabama Rules of Civil Procedure  
19 before Sue Anne Casey, Court Reporter and  
20 Notary Public, State at Large, at The Comfort  
21 Inn, Saraland, Alabama on the 5th day of  
22 March, 2008 commencing at approximately 9:40  
23 a.m.

1                   S T I P U L A T I O N

2

3                   IT IS STIPULATED by and between  
4   Counsel for the parties that this deposition  
5   be taken at this time by Sue Anne Casey, Court  
6   Reporter and Notary Public, State at Large,  
7   who is to act as commissioner without formal  
8   issuance of commission to her; that said  
9   deposition be taken down stenographically,  
10   transcribed and certified by the commissioner.

11

12                  Except for objections as to the form  
13   of the questions, no objections need be made  
14   at the time of the taking of the deposition by  
15   either party, but objections may be interposed  
16   by either party at the time the deposition is  
17   read into evidence, which shall be ruled upon  
18   by the Court on the trial of the cause upon  
19   the grounds of objection, then and there  
20   assigned.

21

22                  The reading and signing of the  
23   deposition is waived.

1                   A P P E A R A N C E S

2

3

4

5       PLAINTIFF:

6       By J. David Moore

7       WALSTON, WELLS & BIRCHALL, LLP

8       1819 Fifth Avenue North

9       Suite 1100

10      Birmingham, AL 35203

11

12

13

14

15      DEFENDANT:

16      By Christopher M. Sledge

17      WOODARD, PATEL & SLEDGE

18      1213 East Three Notch Street

19      Andalusia, AL 36420

20

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22

23

1 I N D E X

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5 EXAMINATION BY: PAGE NO:

6 Mr. Sledge 5, 39

7 Mr. Moore 28, 45

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17 E X H I B I T S

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19

20 (Whereupon, no exhibits were marked.)

21

22

23

1                               DAVID SCOTT

2               being first duly sworn, was examined

3                       and testified as follows:

4

5

6       EXAMINATION BY MR. SLEDGE:

7               Q.     Could you please state your full

8     name?

9               A.     David Gill Scott.

10              Q.     What was that middle name?

11              A.     Gill, G-I-L-L.

12              Q.     Okay. Have you ever done a

13     deposition before?

14              A.     No.

15              Q.     I'm gonna ask you some questions

16     under oath. And if there's anything you don't

17     understand, just tell me, and I'll try to

18     rephrase it and try to get the question a

19     little better to understand.

20              A.     Okay.

21              Q.     If you need a break, tell me, and

22     we'll take a break at any point in time.

23              Where are you employed?

1           A.    Boan Contracting Company,  
2   Incorporated.

3           Q.    Okay.  And how long have you been  
4   in an employee of Boan?

5           A.    Since January of 1997.

6           Q.    And what are your duties with Boan?

7           A.    I'm the controller.

8           Q.    And what exactly is a controller?

9           A.    General accounting oversight and  
10   then various duties assigned by the ownership.

11          Q.    Have you been a controller ever  
12   since 1997?

13          A.    Yes.

14          Q.    Okay.  And where do you work out  
15   of?

16          A.    Greenville, Alabama.

17          Q.    Have you worked out of Greenville  
18   since '97?

19          A.    Yes.

20          Q.    Any other places you might have  
21   worked out of?

22          A.    We have an office in Fairhope,  
23   Alabama.

1 Q. What exactly does Boan do?

2 A. We're a utility pipeline  
3 contractor. We specialize in the installation  
4 of water, natural gas, crude oil and sewer  
5 pipelines.

6 Q. Okay. Does Boan work throughout  
7 the State of Alabama?

8 A. We do. We also work in other  
9 southeastern states specifically Florida and  
10 Mississippi.

11 Q. And how many employees does Boan  
12 have?

13 A. It fluctuates based on the  
14 workload.

15 Q. Let me ask you back in September of  
16 2005, how many employees did Boan have.

17 A. I don't recall exactly. A rough  
18 estimate would be between eighty and a  
19 hundred.

20 Q. Okay. Do you know Roger Smith?

21 A. I do.

22 Q. Or did.

23 A. I did.



1 Q. And how did you know Roger?

2 A. Roger was an employee of the  
3 company.

4 Q. Okay. And what capacity was he in?

5 A. He was a foreman.

6 Q. And how long was Roger a foreman  
7 for Boan?

8 A. I don't recall exactly. He was a  
9 long time employee. He did have a break in  
10 service and had come back to Boan Contracting.  
11 But I don't have the dates with me.

12 Q. Does eighteen years sound about  
13 right give or take that little break?

14 A. Give or take the break, I think  
15 that's in the neighborhood.

16 Q. Do you know how long he was a  
17 foreman?

18 A. No, I do not.

19 Q. Where did he work out of?

20 A. What do you mean?

21 Q. Well, is there a Fairhope office  
22 and a Greenville office?

23 A. There is a Fairhope office and a

1 Greenville office. However, the Greenville  
2 office would be his hub. I mean, all of our  
3 main operations are based out of Greenville.  
4 Our equipment yard, our shop, everything is in  
5 Greenville. Fairhope is more of an  
6 administrative office.

7 Q. Okay. What would be his duties as  
8 a foreman?

9 A. Leading a crew and performing the  
10 actual project. He would -- Pipeline  
11 installation.

12 Q. How many crew members would he have  
13 under him?

14 A. It depended on the job. It could  
15 be three to ten.

16 Q. Okay.

17 A. And he may work in conjunction with  
18 other foremen on larger projects.

19 Q. Okay. Was he a salary employee?

20 A. He was.

21 Q. What was his -- You may not know,  
22 but what was his salary in 2005?

23 A. I believe it was a thousand a week.

1 Q. Did he have any fringe benefits,  
2 per diem, anything along those lines?

3 A. Yes.

4 Q. What kind?

5 A. He made a per diem -- daily per  
6 diem.

7 Q. And what did that consist of?

8 A. I would have to look.

9 Q. Okay. Did that consist of travel  
10 pay?

11 A. Mainly meals.

12 Q. Meals?

13 A. And then the company covered hotel  
14 and lodging while they were on site at the  
15 jobs.

16 Q. What about transportation?

17 A. He was assigned a company vehicle.

18 Q. Okay. In 2005, what kind of  
19 vehicle did he have -- company vehicle?

20 A. He had a pickup truck.

21 Q. And how long was he assigned a  
22 company vehicle?

23 A. I believe he had one for the

1 duration of his employment.

2 Q. Did all foremans have a company  
3 vehicle?

4 A. They do.

5 Q. Are the foremans' vehicles  
6 specialized or be any different from another  
7 employee's vehicles like if a crew member had  
8 a company vehicle?

9 A. There may or may not be specific  
10 equipment or a specific body type; bed, tool  
11 box on his particular truck.

12 Q. Do the foremans' company truck, do  
13 they have particular tools that other company  
14 trucks don't have?

15 A. That would be on a case-by-case  
16 basis. It could, but I'm not aware of the  
17 specifics that would be on any one truck. And  
18 there may be specific tools that are used on  
19 one job but not used on another job. So he  
20 may have a tool with him at one time that he  
21 wouldn't have three months later or two months  
22 later.

23 Q. What is Boan's policy concerning

12

1 the use of company vehicles?

2 A. They're to be used for company  
3 business.

4 Q. Are they allowed to be used for  
5 transportation to and from work?

6 A. Yes.

7 Q. So anyone who was issued a company  
8 vehicle could use it to drive home or drive to  
9 a job site?

10 A. That's correct.

11

12 (Whereupon, a break was taken.)

13

14 Q. I think I was asking you about the  
15 policy Boan had concerning the use of company  
16 trucks. What is Boan's policy in regards to  
17 company trucks in relation to vacation time?  
18 Are the employees allowed to take the company  
19 truck home with them when they go on vacation?  
20 What's Boan's policy or does Boan have a  
21 policy?

22 A. The trucks are to be used for  
23 business purposes. So as far as -- An

1 employee shouldn't take a company truck on a  
2 vacation. But if it -- If it stays at his  
3 house and then he goes on a vacation  
4 somewhere, there's nothing prohibited against  
5 that as long as he's not taking his truck on  
6 his vacation.

7 Q. So Boan doesn't have a particular  
8 policy saying that basically because there may  
9 be tools needed on one particular truck if  
10 you're going on vacation, you need to leave  
11 the truck at the job site?

12 A. It would be the employee's  
13 responsibility not to take something that was  
14 needed on a job site away from that job site  
15 for an extended period of time. But there's  
16 no set policy. That's a common sense  
17 objective.

18 Q. Okay. What is Boan's policy  
19 concerning, say, you're at a job site with a  
20 company truck out of town away from your home  
21 and an emergency arises with your home? Are  
22 you allowed to use your company truck to  
23 travel home if you had to leave from work?

1           A.    In an emergency situation, the  
2   individual assigned the truck should obtain or  
3   basically get authorization from his superior  
4   with regard -- in an emergency situation. I'm  
5   sure if there was an emergency, an employee  
6   who had a truck could contact Barry Boan and  
7   ask permission to use his company truck to do  
8   something of a personal nature in an emergency  
9   situation. And then Mr. Boan would make that  
10  decision whether or not it was allowable.

11          Q.    Back in 2005, how many company  
12  trucks did Boan have?

13          A.    I don't recall exactly.

14          Q.    Okay. Who did you have your  
15  insurance with?

16          A.    The agent was Turner Insurance and  
17  Bonding. The company was Zurich.

18          Q.    Did you have any dealings with the  
19  insurance on automobiles?

20          A.    I did.

21          Q.    You personally. Okay.

22                Did you have any dealings with naming  
23  the insured on that policy --

1           A.    I did.

2           Q.    -- deciding who was the named  
3   insured?

4           A.    I did.

5           Q.    Was Roger Smith a named insured on  
6   the policy?

7           A.    He was listed as a driver on the  
8   policy.

9           Q.    Was he listed as a driver matching  
10   up to a particular company truck or just in  
11   general for all company trucks?

12          A.    It's fleetwide is my understanding.

13          Q.    Okay. Did you personally list him  
14   as a driver?

15          A.    I don't understand what you're  
16   asking.

17          Q.    I assume you had to fill out forms  
18   with Zurich when you were getting your  
19   insurance with them.

20          A.    Um-hum (yes).

21          Q.    Did you have to provide them with a  
22   list of all drivers?

23          A.    They had a running list. Turner



1 had been our agent since 2003, I think we  
2 started back with them. And they had a  
3 running list of Boan Contracting drivers,  
4 which, yes, I would be in charge of editing or  
5 dropping and adding.

6 Q. So if you got a new employee, you  
7 would send over to Turner and say, hey, we've  
8 got this new employee that's gonna be using  
9 one of our company trucks?

10 A. Exactly. Well, we would basically  
11 ask -- have Turner, who would submit a new  
12 employee's information. Turner would let us  
13 know whether that person would be allowed or  
14 would not be allowed to be added to our  
15 driver's list.

16 Q. What kind of qualifications would  
17 that driver have to have?

18 A. It depends on the truck obviously  
19 whether you would have to have a regular  
20 driver's license or a CDL. And then outside  
21 of that, we let the insurance company notify  
22 us if there was a problem with the driver.  
23 And our policy was if you were uninsurable,

1 then that was gonna be a problem from the  
2 company's aspect. But if the insurance  
3 company had no problem insuring you as a  
4 driver for us, then we didn't have a problem.

5 Q. Okay. How long was Roger Smith a  
6 listed driver under your insurance policy --  
7 automobile insurance policy?

8 A. As far as I know, he was a listed  
9 driver each year that he was with the company.

10 Q. The entire time he was employed  
11 whether it be eighteen or --

12 A. To the best of my knowledge.

13 Q. Okay. Did you have to submit any  
14 kind of qualifications for him like his  
15 driving history to the insurance company or  
16 things along those lines or did you just  
17 provide the names to the insurance company?

18 A. We provided the names. I mean,  
19 there could have been a MVR run on Roger or on  
20 our drivers, but I don't believe that I  
21 personally submitted that request.

22 Q. But you know for certain personally  
23 that Roger was a listed driver under the

1 insurance.

2 A. To the best of my knowledge, he  
3 was.

4 Q. And you provided that list to  
5 Turner and Associates?

6 A. It would have been -- That's  
7 correct.

8 Q. Who is an agent of Zurich.

9 A. That's correct.

10 MR. MOORE: Object to the form of  
11 that last question. Can you answer it again?

12 A. Please restate it.

13 Q. Okay. You submitted that list of  
14 drivers to Turner and Associates.

15 A. Or they would have had a list from  
16 the prior year that there would have been a  
17 drop or an add to it.

18 Q. Okay. And that list contained  
19 Roger Smith's name as a driver -- as a listed  
20 driver.

21 A. To the best of my knowledge.

22 Q. All right. And Turner and  
23 Associates is an agent of Zurich Insurance.

1                   MR. MOORE: Object to the form. Go  
2 ahead if you know the answer.

3           A. Turner was our agent. Zurich was  
4 the insurance company.

5           Q. Let me take you back to September  
6 8, 2005. Do you recall that day?

7           A. Yes.

8           Q. That's the day Roger was killed in  
9 the automobile accident.

10          A. Yes.

11          Q. Where was Roger working the week  
12 prior to that?

13          A. Jacksonville, Florida.

14          Q. Okay. And how long had he been  
15 working in Jacksonville prior to that?

16          A. I don't recall exactly, but some  
17 period of months, I would think.

18          Q. What were they doing down in  
19 Jacksonville?

20          A. Installing a water main.

21          Q. Do you recall if Roger was taking  
22 any vacation time prior to September 8, 2005?

23          A. Prior being --

1           Q.    The week before or two weeks  
2   before.

3           A.    I don't have direct knowledge of  
4   him being on vacation.  It's my understanding  
5   that he had taken some personal time prior to  
6   that though.

7           Q.    Okay.  When?  Do you recall when  
8   that was that he took some personal time?

9           A.    It's my understanding that he had  
10   taken some personal time the prior week --

11          Q.    Right.

12          A.    -- or weekend.  But I don't know  
13   the specifics.

14          Q.    Now, he was involved in this  
15   accident on Thursday.  In relation to the  
16   automobile accident, when do you think he was  
17   taking the personal time?

18          A.    Either the end of the prior week or  
19   over the prior weekend.

20          Q.    Okay.

21          A.    But that's -- I don't know that for  
22   a fact.  That's just my understanding.

23          Q.    Yes, sir.  Did you deal with any of

1 the personal time? When an employee wanted to  
2 take personal time, did you --

3 A. No.

4 Q. -- have any dealings with it?

5 A. No.

6 Q. What about vacation time?

7 A. No. We don't have any set vacation  
8 policies that are written.

9 Q. What about personal time policies?

10 A. We don't have any set personal time  
11 policies that are written.

12 Q. So how does that work if you need a  
13 day off?

14 A. If Roger -- If you need a day off,  
15 you ask your superior for the day off.

16 Q. Okay. Do you recall anything  
17 happening at the Jacksonville work site the  
18 weekend prior to September 8th; any kind of  
19 emergency, any kind of back log or anything  
20 along those lines?

21 A. I do not.

22 Q. Okay. Do you recall anybody  
23 calling Roger while he was taking his personal

1 time and say, hey, Roger, we need you to come  
2 back to the work site in Jacksonville?

3 A. I'm not aware of any conversation  
4 like that.

5 Q. Who would make a call like that if  
6 one was made? Was it any particular person in  
7 the company that would be responsible for that  
8 particular work site in Jacksonville?

9 A. I believe Barry Boan was at that  
10 job site some or -- I don't know if he was at  
11 that job site that particular time or not.  
12 But Barry Boan was overall in charge of that  
13 job.

14 Q. So he would be Roger's direct  
15 supervisor on that particular job site.

16 A. That's correct.

17 Q. Anybody else above Roger at that  
18 particular job site?

19 A. Barry Boan would be the top.

20 Q. Okay. So if a call was placed to  
21 Roger telling Roger he needed to come to the  
22 Jacksonville work site the weekend before his  
23 death, it is very likely that Barry Boan would

1 have been the one either calling --

2 A. Could have been. Allen Boan also  
3 could have called Roger if -- and asked him to  
4 do that. I would think one of those two.

5 Q. Okay. Do you recall when Hurricane  
6 Katrina came through?

7 A. I do.

8 Q. Do you know if it had any affect on  
9 the Jacksonville work site?

10 A. I don't believe that it did. I  
11 think it was far enough west of Jacksonville  
12 not to have any affect there.

13 Q. Whether it be a lot of rain that  
14 would require y'all to take days --

15 A. It's possible.

16 Q. Do you know if y'all were behind at  
17 Jacksonville during this period of time during  
18 September of 2005?

19 A. I don't remember specifically. I  
20 believe there were some weather related issues  
21 with that job. I don't know if it's  
22 necessarily Katrina related.

23 Q. Okay. What is Boan's policy



1 concerning traveling to and from work? Do  
2 y'all consider that to be part of your work?  
3 I know sometimes like in this particular case  
4 Roger had to travel to and from Jacksonville.

5 A. Um-hum (yes).

6 Q. Was that his scope of employment  
7 when he was traveling to and from  
8 Jacksonville, Florida?

9 MR. MOORE: Object to the form. Go  
10 ahead.

11 A. He had to get to and from the job  
12 site to perform his work.

13 Q. Did y'all consider him actually  
14 working? If he was driving to the work site,  
15 did y'all consider that to be working?

16 A. It was part of his work getting to  
17 and from the job site.

18 Q. Okay. I understand Roger's estate  
19 has made a workmans comp claim for his death.

20 A. Yeah.

21 Q. And y'all -- Boan didn't dispute  
22 that he was in the line or scope of his  
23 employment as that workmans comp claim was

1 concerned.

2 A. Boan Contracting did not dispute  
3 that.

4 Q. Even though he was on his personal  
5 vehicle.

6 A. That's correct.

7 Q. Okay. What do you understand --  
8 What is your understanding of the reasons why  
9 he was on his personal vehicle?

10 A. It's my understanding Roger had  
11 taken care of some personal business out of  
12 state and then drove directly to the job site  
13 because he was -- He was in his personal  
14 vehicle because he was handling a personal  
15 matter and went ahead and drove to the job  
16 site in his personal vehicle and upon leaving  
17 the job site, was still in his personal  
18 vehicle and drove home.

19 Q. Okay. Does Boan keep up with the  
20 work period -- Let me ask it this way.

21 If a crew was working in Jacksonville,  
22 Florida and they had worked for a two-week  
23 span without coming home, does Boan keep up

1 with that in some form or fashion to tell you  
2 exactly what crew was down in Jacksonville and  
3 for what period of time?

4 A. Yes.

5 Q. Are you responsible for those  
6 records?

7 A. I have a payroll clerk who is  
8 responsible directly for those records, but  
9 I'm her supervisor, so yes.

10 Q. Okay. Would it matter whether an  
11 employee was a salary employee or not? Would  
12 you still --

13 A. No. There would be a time sheet  
14 for salary and/or hourly laborer.

15 Q. So there's a way to find out  
16 exactly when Roger reported to the job site in  
17 Jacksonville prior to September 8th?

18 A. Yes.

19 Q. And that's a payroll report or  
20 something?

21 A. Should be.

22 Q. Okay. Would you still have those  
23 records even though it may be back in 2005?

1 A. It's possible.

2 Q. So those records would give us a  
3 clear indication of when he reported to that  
4 job site a week before his --

5 A. It's possible. Roger was salaried,  
6 so he may not -- His records may not be as  
7 detailed. But the crew in Jacksonville for  
8 those times period involved would be set out.

9 Q. Okay. And a member of his crew was  
10 Doug Boutwell; is that right?

11 A. I believe so, but I'm not sure.

12 Q. I think he testified that he was a  
13 member of his crew.

14 A. Um-hum (yes).

15 Q. Would Doug's records, him not being  
16 a foreman, would those reflect when Doug went  
17 down to the job site also?

18 A. Yes.

19 Q. Okay. And when he left the job  
20 site?

21 A. Yes.

22 Q. Do you know if Roger's company  
23 truck -- In September of 2005, do you know if

1 it was ever in the shop being repaired or  
2 having modifications done to it?

3 A. I don't have any direct knowledge  
4 of that.

5 Q. Who would have direct knowledge of  
6 that?

7 A. Our shop foreman.

8 Q. The shop foreman in Greenville?

9 A. In Greenville, yes.

10 Q. And who is the shop foreman?

11 A. Ernie Floyd.

12 Q. That's it.

13

14 EXAMINATION BY MR. MOORE:

15 Q. Mr. Scott, I'm gonna have a few  
16 questions for you. I'll try to keep it brief  
17 and try not to repeat things you've already  
18 been asked.

19 A. Okay.

20 Q. But I probably will anyway. And I  
21 apologize for that.

22 You were asked some questions about Mr.  
23 Smith's being a listed driver under the auto

1 policy Boan had through Zurich. Do you recall  
2 that?

3 A. I do.

4 Q. It's my understanding that the  
5 policy also -- about how many -- Let's just go  
6 back. Do you know about how many listed  
7 drivers there are under that policy just  
8 roughly?

9 A. I do not specifically. I would  
10 direct you to the policy.

11 Q. That's fine. Thank you. There  
12 are, are there not, under that policy a number  
13 of Boan employees who are insured while  
14 they're driving any vehicle, not just a  
15 company vehicle; is that right?

16 A. There are.

17 Q. Are you one of those employees?

18 A. I am.

19 Q. Was Mr. Smith ever one of those  
20 employees?

21 A. Not to my knowledge.

22 Q. The policy would indicate --

23 A. The policy would indicate it.

1 Q. -- ultimately whether he was or  
2 wasn't; correct?

3 A. That's correct.

4 Q. Did you have any role in obtaining  
5 for Boan that additional coverage for certain  
6 employees while they were driving their own  
7 personal vehicles?

8 A. I did.

9 Q. And was that coverage provided to  
10 your recollection through means of the  
11 endorsement to the policy?

12 A. Yes. It was provided through, I  
13 believe, driver other car, an endorsement or  
14 additional coverage.

15 Q. And that was something -- I'm  
16 sorry. Go ahead.

17 A. It was listed in the policy.

18 Q. And so am I correct to say that  
19 Boan chose to add that additional coverage for  
20 those certain employees and therefore obtained  
21 that endorsement that you just described?

22 A. That's correct.

23 Q. Are you the individual who dealt

1 directly with Turner with respect to renewing  
2 the -- or to obtaining the Zurich auto policy  
3 for Boan?

4 A. I did.

5 Q. And do you recall when Boan first  
6 got its auto insurance through Zurich?

7 A. I believe it was 2003.

8 Q. Okay.

9 A. June 2003.

10 Q. And then that policy was renewed in  
11 '04 and then in '05?

12 A. I believe that's correct.

13 Q. Do you recall anything -- Who was  
14 the agent -- the Turner agent?

15 A. Frank Dean.

16 Q. Frank Dean. Do you remember any  
17 conversations with Mr. Dean in connection with  
18 this Zurich policy about uninsured motorist  
19 coverage in particular?

20 A. I don't remember any direct  
21 conversations, but that -- any policy  
22 questions, I would direct to the policy  
23 itself.



1 Q. Sure. And I'm just trying to ask  
2 if you remember anything Mr. Dean said to you  
3 while you were discussing the policy with him  
4 about uninsured motorists.

5 A. Not specifically, no.

6 Q. Again, that's a long time ago. I  
7 wouldn't expect you to remember that. But if  
8 you do, I just wanted to know what it was.

9 A. Okay.

10 Q. You were asked about your  
11 understanding with regard to Mr. Smith and his  
12 being off work or on vacation prior to his  
13 accident --

14 A. Um-hum (yes).

15 Q. -- in September of 2005. And I  
16 believe you said it was your understanding  
17 that he took some time off approximately the  
18 week before that accident; is that right?

19 A. Roughly. I don't know the exact  
20 dates, but sometime before the accident.

21 Q. And what is the source of your  
22 information about that?

23 A. Other company employees. I have no

1 direct knowledge of that whatsoever. Roger  
2 didn't tell me he was going anywhere. He  
3 didn't call and inform me of anything. But  
4 through conversation with other company  
5 employees, that's how I acquired that  
6 information.

7 Q. Were those conversations -- Did  
8 those conversations you're referring to take  
9 place after his accident or before his  
10 accident?

11 A. After.

12 Q. You were also asked several  
13 questions about who would have been the person  
14 who could have called Mr. Smith if there had  
15 been an emergency. But you're not aware of  
16 any actual emergency in connection with the  
17 Jacksonville, Florida job in the week prior to  
18 Mr. Smith's accident; right?

19 A. I'm not aware of any such instance.

20 Q. So you're not -- You haven't told  
21 us here today that any of those folks; Barry  
22 Boan or anybody else did call Mr. Smith.

23 A. No.

1           Q.    You were asked about whether Boan  
2    -- what Boan considers in connection with the  
3    employees -- its employees driving to and from  
4    job sites. Does Boan pay its employees for  
5    the time they spend driving to and from job  
6    sites?

7           A.    I'm not sure what you're asking.  
8    Is there a difference in salaried employee  
9    versus an hourly employer?

10          Q.    Right. A salaried employee is paid  
11   a salary. So --

12          A.    Right.

13          Q.    With respect to an hourly employee,  
14   do they clock in at the job site or do they  
15   clock in when they leave home to drive to the  
16   job site?

17          A.    I believe it differs. If it starts  
18   or if -- Jobs work differently since our  
19   locations are in various areas. Certain  
20   employees -- All of our employees don't all  
21   live in Greenville, Alabama. They live in  
22   various spots. So some of them get to our job  
23   sites on their own. Some get to out job sites

1 by coming to Greenville and then going to the  
2 job site with a crew. So it all differs.

3 Q. Okay. But with respect to Mr.  
4 Smith, he was an hourly employee at the time  
5 of his accident; right?

6 A. He was salary.

7 Q. I'm sorry. I misstated that. He  
8 was a salary employee at the time of his  
9 accident.

10 A. That's correct.

11 Q. So he wasn't clocking in at the job  
12 site anyway.

13 A. No.

14 Q. You testified about your  
15 understanding that Mr. Smith had been  
16 somewhere on a personal errand or personal  
17 reasons prior to his accident and that he  
18 drove in his own personal truck to the job  
19 site from that location, whether he had been.

20 A. Yes.

21 Q. Again, what is the source of your  
22 information about that?

23 A. Various conversations with various

1 other Boan Contracting employees.

2 Q. Again, after his accident?

3 A. After his accident.

4 Q. Did you ever speak with Mr. Smith

5 himself about --

6 A. No, I did not.

7 Q. Have you ever spoken with his wife

8 since -- about any of these facts concerning

9 where he had been prior to his accident?

10 A. No, I have not.

11 Q. Have you ever spoken with Ms. Smith

12 since the accident?

13 A. I may have spoken with her shortly

14 after the accident.

15 Q. Do you recall any discussions with

16 her about the facts of his accident or his

17 work down in Jacksonville?

18 A. No.

19 Q. Is it your understanding that the

20 workers compensation claim filed by Mr.

21 Smith's estate has been paid?

22 A. It's in the process -- Yes. But

23 it's a annuatized settlement, so it's in the

1 process of being paid.

2 Q. Okay. And you were asked if Boan  
3 disputed the claim at all, and the answer was  
4 no.

5 A. We did not.

6 Q. Do you know -- Who is Boan's  
7 workers compensation carrier?

8 A. The insurance is Alabama  
9 Self-Insured Workmans Comp Fund.

10 Q. Do you know if that entity disputed  
11 the claim in any way?

12 A. I'm not aware of any such dispute.

13 Q. How much is the -- How much  
14 benefits are being paid to Mr. Smith's estate?

15 A. It's my understanding that she's  
16 receiving five hundred dollars a week.

17 Q. And how long does that payment  
18 stream last?

19 A. My understanding is ten years, but  
20 I don't know that to be a fact.

21 Q. Did Boan have any policy of life  
22 insurance in place on Mr. Smith at the time of  
23 his death?

1           A.     Boan Contracting did not.

2           Q.     Did Boan Contracting reimburse Mr.  
3     Smith or his family for his use of his own  
4     personal car the week that he was going back  
5     and forth to Jacksonville in it?

6           A.     Not to my knowledge.

7           Q.     Does Boan have any policy regarding  
8     the reimbursement of employees for the use of  
9     their own personal vehicles?

10          A.     There's no written policy.

11          Q.     Okay. Do you have any knowledge  
12     with respect to where Mr. Smith was going at  
13     the time of his accident?

14          A.     I don't have any direct knowledge.

15          Q.     What's your understanding?

16          A.     My understanding is he was going to  
17     his residence.

18          Q.     As far as you know, he wasn't  
19     returning to the Greenville office or going  
20     anywhere on Boan's instructions?

21          A.     Not as far as I know.

22          Q.     And I understand you don't have  
23     direct knowledge.

1           A.    Right.  I don't.

2           Q.    That's it, Mr. Scott.

3

4   EXAMINATION BY MR. SLEDGE:

5           Q.    Just a couple of follow-up  
6   questions.

7           Does Boan dispute that Roger Smith was  
8   acting in the line and scope of his employment  
9   with Boan Contracting when he was killed in  
10   this automobile accident?

11           MR. MOORE:  Object to the form  
12   particularly because I don't know that Mr.  
13   Scott is a person to make that statement on  
14   behalf of Boan.

15           Q.    Do you have any knowledge that Boan  
16   is disputing that Roger Smith was acting  
17   within his line and scope of his employment  
18   with Boan Contracting when he was killed in  
19   the automobile accident back on September 8,  
20   2005?

21           A.    I do not have any knowledge.

22           Q.    Now, I asked you some questions  
23   about as far as the workmans comp claim was



1 concerned. There was no dispute over whether  
2 he was in the line and scope of his  
3 employment.

4 A. Not that I'm aware of.

5 Q. All right. You spoke earlier about  
6 driver -- drive other coverage under the  
7 insurance policy with Zurich.

8 A. Um-hum (yes).

9 Q. And you said you were listed as one  
10 of the other drivers that had additional  
11 coverage.

12 A. That's correct.

13 Q. I'm gonna show you a page from the  
14 actual policy that I received from Zurich  
15 Insurance Company and ask you to look at that.  
16 I'm referring to the policy coverage.

17 Do you recognize this page?

18 A. Not specifically, no.

19 Q. Okay. Have you ever seen this?  
20 Have you ever actually seen the Zurich policy?

21 A. I have seen the policy.

22 Q. Okay. Now, the title of this page  
23 is Drive Other Car Coverage Broaden; is that

1 correct?

2 A. That is correct.

3 Q. Okay. And it contains your name on  
4 down the page.

5 A. It does.

6 Q. All right. Now, you testified  
7 earlier that you were one of the employees  
8 that had additional coverage --

9 A. That's correct.

10 Q. -- under the Zurich policy. What  
11 is your understanding about that additional  
12 coverage?

13 A. What do you mean?

14 Q. Well, you said you had additional  
15 coverage.

16 A. Right.

17 Q. What makes your coverage different  
18 from another employee's?

19 A. My coverage is to drive any other  
20 vehicle that's not listed on Boan  
21 Contracting's auto schedule.

22 Q. So correct me if I'm right or tell  
23 me if I'm right. My understanding is that if

1 you're driving your own personal vehicle, your  
2 personal vehicle is covered under Zurich --  
3 Boan's policy with Zurich.

4 A. That's correct. Even though my  
5 personal vehicle was not listed on Boan's  
6 automobile policy.

7 Q. Okay. Now, look at this form for  
8 me and tell me what additional premium was  
9 paid for that additional coverage.

10 A. I believe it's included.

11 Q. It was included. So that  
12 additional coverage for yourself was included  
13 in the policy with Zurich that Boan had.

14 Let me rephrase that a little better.  
15 It was included in the policy of automobile  
16 insurance that Boan had with Zurich. It was  
17 included in the premium.

18 A. This is a part of the policy, yes,  
19 or an endorsement or attachment too.

20 Q. So there was no additional cost for  
21 you to receive this additional insurance.

22 A. I'm not aware of that. I don't  
23 know how Zurich came up with the premium.

1 Q. Okay. But it says premium down  
2 here, and it says right beside your name, it  
3 says "included".

4 A. Okay.

5 Q. Is that correct?

6 A. I agree.

7 Q. Do you know if that cost Boan any  
8 more money to insure you in that form?

9 A. I do not know.

10 Q. Okay. And this particular form  
11 says it's included; is that right?

12 A. It does.

13 Q. Okay. And your understanding of  
14 that coverage is basically you could drive  
15 your personal vehicle and if you were killed  
16 in a car accident driving your personal  
17 vehicle, you would be covered under Boan's  
18 policy with Zurich.

19 A. In the line of -- If it's  
20 performing business for Boan Contracting, yes.

21 Q. And looking at this form, Boan  
22 didn't have to pay a dollar more to Zurich for  
23 that coverage for you.

1 A. If that's how you read the form.

2 Q. And again, it says right here plain  
3 and simple David Scott, see limits. And we're  
4 talking about uninsured motorist.

5 A. Um-hum (yes).

6 Q. And it says premium included.

7 A. Right. But --

8 Q. And up here with the actual  
9 liability, the limits of liability are one  
10 million dollars. And it says premium  
11 included.

12 A. It does.

13 Q. Okay. And again, like I said,  
14 uninsured motorist limits, see schedule. So  
15 it's referring you back to the schedule,  
16 whatever the schedule is for the UM limits.  
17 And it says premium, and under that, it says  
18 included.

19 A. Included.

20 Q. Okay. So basically all this is  
21 adding is the personal vehicle clause. Your  
22 personal vehicle is insured under this.  
23 That's all that's really adding. No

1 additional coverage.

2 A. And the other drivers who are on  
3 that.

4 Q. Okay. Did Turner and Associates or  
5 Zurich ever notify Boan to your knowledge that  
6 they could extend this same coverage to every  
7 employee and it wouldn't cost them an  
8 additional premium?

9 A. No.

10 Q. Okay. Thank you, sir.

11

12 EXAMINATION BY MR. MOORE:

13 Q. Just one or two, Mr. Scott.

14 Would you agree with me with respect to  
15 the coverage provided by the endorsement Mr.  
16 Sledge was just asking you about that it's the  
17 policy as it's written that dictates what the  
18 coverage actually is?

19 A. I would agree with that.

20 Q. And you were being asked -- You  
21 were testifying, were you not, as to what your  
22 understanding of the coverage is.

23 A. That's correct.

1           Q.    But the real coverage is determined  
2   by what's written in the policy.

3           A.    That's correct.  The coverage is  
4   determined by the policy.

5           Q.    Okay.  Have you ever spoken with  
6   anybody with Zurich about the claim for  
7   uninsured motorist benefits that's been made  
8   by Mr. Smith's estate?  And I'm talking to you  
9   here today.  I don't mean the lawyers.  Any  
10   employee of Zurich about the claim that's  
11   being made on behalf of Mr. Smith's estate.

12          A.    I think a claims adjustor did make  
13   contact with me.  I don't recall the specifics  
14   other than just discussing the generalities  
15   that's involved in making sure Mr. Smith was  
16   an employee.  But I don't recall any specific  
17   conversation.

18          Q.    Is that the only contact you can  
19   recall?

20          A.    The contact was very general.

21          Q.    That's it, Mr. Scott.

22                MR. SLEDGE:  That's it.

23                FURTHER DEPONENT SAITH NOT

1 C E R T I F I C A T E

2

3 STATE OF ALABAMA)

4 COUNTY OF BUTLER)

5

6 I do hereby certify that the above and  
7 foregoing transcript of proceedings in the  
8 matter aforementioned was taken down by me in  
9 machine shorthand, and the questions and  
10 answers thereto reduced to writing under my  
11 personal supervision, and that the foregoing  
12 represents a true and correct transcript of  
13 the proceedings given by said witness upon  
14 said hearing.

15

16 I further certify that I am neither of  
17 counsel nor related to the parties to the  
18 action, nor am I in any wise interested in the  
19 result of said cause.

20

21

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Sue Anne Casey

22

Court Reporter

23